

Part 2
(Two parts)

NO. 19815-A

Law Notes, etc.

Reed Bird Island

city vs wagners

Closed 10/16/56

~~Fast land + bridge~~
Riparian (ownership)

That on or about 9-15-1657 Cecilius Calvert
et al granted unto one Major Richard Ewen
a tract of land called "Duke's Cove" or "Duck
Pond" on the E of the Patuxent River containing
350 acres +

By & da 1-19-1854 "NC among the LR of H Co in
Witten N H G 203 ptho 27 of 50 acres of this
tract was acquired by the Patuxent
Company, which Company on 5-25-1858

(N H G 207 ptho 207) conveyed 1/2 acre of
said tract to Richard O. Crisp et al
for the purpose of constructing a bridge
across the Patuxent River (said 1/2 acre
lot being designated as Lot on the plat
herewith).

The said Richard O. Crisp having
been authorized by the Acts of 1856 Chap 215
to erect said bridge ~~with~~ "full power + authority
to enter upon + hold in fee any land necessary
or proper for the abutments + piers of said
bridge" The said bridge being identified on the

On 6-11-1858 the Patuxent Company obtained
a special warrant to resurvey various
tracts of its land including the above
mentioned "Duke's Cove". Thereafter on
12-4-1858 the patent of "Brooklyn" was
issued to the Patuxent Company (and

Plat herein ment, and as
"Long Bridge" or "Light St Bridge"
as foregoing ment with a width of 20

(-)

over the Patuxco River from a point on
the Ns of said River to such point on the
Ss of said River in AA Co as the said Corps
might select & "to enter upon & hold in fee
any land necessary or proper for the
abutments or piers of said bridge & for other
purposes contemplated by this Act for this
purpose" & to purchase or condemn such
lands as he might deem necessary

(3)

On 5-3-1880 the Mayor of Balt. & the County
Commiss. of AA Co, acting in pursuance of
the authority granted them under the Acts of
1878 (Chap 1519) purchased from Richard O.
Chapital the bridge & its appurtenances
including the $\frac{1}{2}$ acre lot all as heretofore
mentioned. (7AP 3887 Pm 369)

Under the Acts of 1888 (Chap 98) the Mayor of Balt.
was charged with the sole maintenance of
said Bridge, thereafter in or about the
year 1890 said bridge was widened to
the width of 30' by the addition of 10' along
the west side thereof for its entire length, of
said 10' addition being supported by
additional pilings sunk into the river
bed.

Said bridge was thus maintained until
1917 when the same was replaced by the
present Hanover Street Bridge (as
indicated on the plat) erected by the State
Roads Commission of Md under the authority
of Chap 267 of the Acts of 1914. Said Act
further authorized the Mayor of Balt. to remove
or otherwise dispose of the Light Street Bridge.
By virtue of Chap 82 of the Acts of 1918
there was annexed to the City of Balt.

(4)

Certain portions of Anne Arundel County including therein the property depicted on the Plat herewith Under Sec 9 of said Act the title of the Co Comm of AA Co in & to its public property became vested in the Mayor of Balto. & by Sec 11 of said Act it was provided that all roads streets alleys & avenues lying within the annexed territory should be thereafter validly constituted public highways of Balto. City & that any bridges existing in any of said highways should be considered as parts thereof. That all of the area as shown on said plat is within the corporate limits of B City as enlarged by the said Chap 82 of the Acts of 1918.

By Order 7-8-1904 Rec among C.R. of B City in after Sec 204 & 50 of the 60th the Mayor of Balto conveyed part of lot indicated as lot - on the plat herewith to the Standard Oil Co of N.J. reserving however "all riparian rights in & to the Patuxent River to which this property is in any way entitled".

By Order 4-15-1906 REC among the aforesaid C.R. in after Sec 204 & 50 of the 60th the Mayor of Balto acquired from the B Balto Harbor & Docks Company all these lots & riparian rights as

6

are indicated as lots — — — on the
accompanying plat

By order of the M.C. among the L.R. of the
B City Papermill in Lake Sec. 13 of the
M.C. of Balto. acquired from the State of Ind. that
lot designated as Lot on said plat
That in or about the year 1870 it was
laid out & constructed by the M.C. of
Balto. within the limits as indicated on
the attached plat

Title to all of said lots having been originally
vested in the Putnam Company!

Rosmos Exploration Co vs Gray Eagle Oil Co
112 Federal 4
(affirmed US Supreme Ct
1190 U.S. - 301)

" Vacant lands are such as are absolutely free, unclaimed & unoccupied. ('The word 'vacant' when applied to lands, means those which have not been appropriated by individuals'.
Marshall v Bompart
18 Mo. - 84, 87"

COPY

INSERT "A" - 1

CITY SOLICITOR'S OFFICE

Assuming also, without admitting and for the purposes of this Memorandum alone, Reed Bird Island, at the time the patent was granted unto John P. Bruns, was above water at high tide, the serious question arises, to wit, was said land vacant "so as to be patentable", in accordance with Art. 54, of the Laws of Maryland?

It is the Mayor and City Council of Baltimore's contention that in order for said land to be considered as vacant that it must be "absolutely free, unclaimed and unoccupied."

SEE: Marshall v. Bonaparte, 18 Mo. 84;
Cosmos Co. v. Gray, 112 Fed. 425 (Affirmed Supreme Ct.
190 U. S. 301.)

The testimony and evidence in this case clearly indicates the following:

That the Mayor and City Council of Baltimore owned a fee simple strip of land previously granted to it by Richard O. Crisp in 1880, and that over this land there was constructed a bridge which the Mayor and City Council of Baltimore maintained and repaired, in whole or in part, from 1880 until 1917; that the fee simple ownership of the strip of land under the bridge, the bridge itself and the exercise by the Mayor and City Council of Baltimore of its right of ownership over said bridge by repairing and maintaining it, without question shows that the land known as Reed Bird Island was in fact not vacant but occupied by the Mayor and City Council of Baltimore prior to, during and subsequent to the date of the grant of the patent unto John P. Bruns.

The Mayor and City Council of Baltimore has never relinquished, waived, transferred, assigned, or deeded away the fee simple right to the

COPY

-2-

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strip of land under the old Light Street bridge, even though said bridge was removed in 1917. It is submitted for the Court's consideration that the Respondents, at no time, ever took physical possession of that strip of land over which the Light Street bridge was constructed. This being so, the Mayor and City Council of Baltimore is in the strong position where it not only owns the fast land to the south of Reed Bird Island, but it actually owns a fee simple strip of land granted by the highest form of grant existing in this State.

SEE: Acts of the General Assembly of Maryland, 1856,
Chap. 215.

We, then, have a situation presented wherein a patent was granted to a piece of land which we are assuming for this argument to be out of water, which was one not vacant or unoccupied at the time it was patented, and which was in direct line of approach from the Mayor and City Council of Baltimore's fast land on the south to the channel of the Patapsco River due north of the Mayor and City Council of Baltimore's fast land

Gore vs Todd

150 Md - 285

Appellants filed application for survey to grant certain land they alleged to be vacant & deeded as all that part of an island called "Middle Island" which is not included within deed from Todd to Moore x x

Surveyors Return showed survey of Middle Island of 185 acres with this postscript "not knowing where Middle Island $5\frac{1}{4}$ acres lay at, I have not subtracted it from the whole"

As holders of record title to $5\frac{1}{4}$ acres under patent of 1793 + as claimants of title to remainder of island by adverse possession appellants filed caveat against issuance of patent to appellees for any part of island as if vacant area
Caveat sustained & on appeal the Ct said "A patent could not have been properly issued to the appellants for the land described in the surveyors

perhaps because it included a tract for
which a patent had already been
issued + the title to which was not
shown to have escheated subsequently
to the State"

Smith vs Baker
4 Ind Ch, 29

Twiggs vs Jacob
14 Ind Ch, 241

Lee v Hoge
1 Gill, 188

MAYOR & CITY COUNCIL OF BALTIMORE * IN THE CIRCUIT COURT
Plaintiff * FOR
vs. * ANNE ARUNDEL COUNTY
H. MILTON WAGNER, JR., et al. * In Equity
Respondents * Docket 6
* Folio 66
* Year 1916
* No. 4071
*

* * * * *

STIPULATION

IT IS STIPULATED by and between the parties hereto as follows:

1. Chapter 215 of the Laws of Maryland of 1856 authorized Richard Owens Crisp to construct a bridge over the Patapsco River from a point on the north side of said River called Ferry Bar to such point on the south side of said River in Anne Arundel County as the said Richard Owens Crisp might select. The said Act also authorized the said Richard Owens Crisp "to enter upon and hold in fee any land necessary or proper for the abutments or piers of said bridge, and for other purposes contemplated by this Act; and for this purpose" to purchase or condemn such lands as he might deem necessary for the purposes aforesaid.

2. On May 25, 1858, Richard Owens Crisp and Richard Cromwell, Jr., purchased from Patapsco Company a certain tract of land in Anne Arundel County by deed recorded among the Land Records of Anne Arundel County in Liber W.H.G. No. 7, folio 207, a copy of which is attached hereto as Agreed Exhibit No. 1. The land described therein is shown hatched in yellow on the plat attached hereto as Agreed Exhibit No. 2. The Light Street Bridge referred to in the deed of May 25, 1858, is the bridge authorized by Chapter 215, Laws of Maryland of 1856.

3. Chapter 159 of the Laws of Maryland of 1878 authorized, directed and empowered the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County to purchase said Light Street Bridge, together with the buildings, abutments and all other appurtenances thereto belonging or appertaining, if a price could be agreed upon with the owners thereof and if unable to agree with the owners thereof the said Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County were authorized, empowered and directed to build a substantial bridge over said river. The bridge purchased or built as provided by said Act by the City and County and the cost of purchasing it and maintaining it was to be borne equally by the said City and County.

4. On May 3, 1880, Richard O. Crisp and Annie E. Crisp, his wife, Richard Cromwell and Elizabeth Anne Cromwell, his wife, conveyed to the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County their interest in said bridge, together with the lot of ground hereinabove referred to, which they purchased from the Patapsco Company on May 25, 1858. The deed from Richard O. Crisp, et al., to the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County is recorded among the Land Records of Baltimore City in Liber F.A.P. No. 887, folio 369. It is likewise recorded in the Land Records of Anne Arundel County in Liber S.H. No. 16, folio 27. A copy of said deed as recorded among the Land Records of Baltimore City is attached hereto, marked Agreed Exhibit No. 3.

5. Section 27 of Chapter 98 of the Acts of 1888 (being the Annexation Act of 1888) provides in part that the said Light Street Bridge should thereafter "be maintained and kept in repair for public travel at the sole expense of said City of Baltimore * * *", and that the said City so maintained said bridge until

sometime during the year 1917, when the said bridge was replaced by the present Hanover Street Bridge. The said Light Street Bridge was a public highway between Baltimore City and Anne Arundel County used by all kinds of vehicular traffic as well as street cars and pedestrians.

6. On September 10, 1909, a patent was issued out of the Land Office of Maryland to John P. Bruns for "a tract or parcel of land called 'Reed Bird Island', (being an island in the Patapsco River) lying in Anne Arundel County, State of Maryland, and containing 33-3/4 acres of land, more or less", said patent being recorded among the Land Office Records in Liber E.S.T. No. 1, folio 217. A copy of said patent is attached to the Bill of Complaint herein marked Plaintiff's Exhibit A. Said patent was granted upon a survey of Reed Bird Island made September 15, 1908, including a description and plat of the Island, by L. H. Green, County Surveyor. A copy of said survey and plat is attached to the Bill of Complaint herein marked Plaintiff's Exhibit C. The Light Street Bridge shown on said plat is the same Light Street Bridge authorized and built under Authority of Chapter 215, Laws of Maryland of 1856.

7. On September 23, 1910, the said John P. Bruns, together with one John McLeod and Minnie McLeod, his wife, executed a deed to the said "Reed Bird Island" to the original defendant, Harry M. Wagner, which deed is recorded among the Land Records of Anne Arundel County in Liber G.W. No. 83, folio 184. A copy of said deed is attached to the Bill of Complaint marked Plaintiff's Exhibit B. The present defendants have been substituted as parties defendant in the place and stead of the original defendant, now deceased. The present defendants are successors in title to Harry M. Wagner, as more fully described in the Petition to Substitute Parties Respondent, heretofore filed herein.

8. Chapter 267 of the Laws of Maryland of 1914 authorized the State Roads Commission to construct a bridge from Baltimore City to Brooklyn either directly or by way of the point of Baltimore County and provided that upon completion of the said bridge and the opening of the same to travel as a public highway the Mayor and City Council of Baltimore was authorized to remove the present Light Street Bridge. The bridge authorized by said Chapter 267 is known as the Hanover Street Bridge and was completed as set forth above during the year 1917, following which the old Light Street Bridge was removed.

9. By virtue of Chapter 82 of the Laws of Maryland of 1918 there was annexed to Baltimore City certain portions of Baltimore County and Anne Arundel County, including Brooklyn in the latter. Under Section 9 of said Act the title of the County Commissioners of Anne Arundel County and Baltimore County, etc., in any school-houses and lots, etc., etc., and other public property became vested in the Mayor and City Council of Baltimore; and by Section 11 of said Act it was provided that all roads, streets, avenues and alleys lying within the annexed territory should be thereafter validly constituted public highways of Baltimore City, and that any bridges existing in any of said highways would be considered parts thereof. All of the area referred to in this stipulation, including that formerly occupied by the Light Street Bridge, that now occupied by the Hanover Street Bridge and the lot conveyed by Crisp and Cromwell to the County Commissioners of Anne Arundel County and the Mayor and City Council of Baltimore on May 3, 1880, hereinabove referred to, are within the corporate limits of Baltimore City as enlarged by the said Chapter 82 of the Laws of Maryland of 1918.

10. The plat of S. J. Martenet & Co. dated May 28, 1920, attached hereto as Agreed Exhibit No. 4, is a true representation

of the facts which said plat purports to show, except that: (1) the street shown as "Proposed Street" was never laid out or constructed as shown on said plat, and (2) the said plat does not purport to show water levels or depths, and (3) the lines purporting to show Reed Bird Island as granted to John P. Bruns by patent dated September 10, 1909, are not intended to reflect a physical state of facts known to the surveyor making the plat constituting Agreed Exhibit No. 4, but are simply a transposition of the property lines as described in said patent to the geographic area included on said plat.

11. On July 8, 1924, the Mayor and City Council of Baltimore conveyed to the Standard Oil Company of New Jersey a part of the lot conveyed by Crisp and Cromwell to the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County on May 3, 1880, reserving to itself "all riparian rights in and to the Patapsco River to which this property is in ^{way} any/entitled". The said deed from the Mayor and City Council of Baltimore to the Standard Oil Company is recorded among the Land Records of Baltimore City in Liber S.C.L. No. 4250, folio 60. A copy of said deed is attached hereto marked Agreed Exhibit No. 5.

12. On April 15, 1926, the South Baltimore Harbor and Improvement Company of Anne Arundel County conveyed to the Mayor and City Council of Baltimore for the consideration of \$50,000 certain property and riparian rights as will more fully appear from said deed recorded in Liber S.C.L. No. 4570, folio 49 among the Land Records of Baltimore City. A copy of said deed is attached hereto marked Agreed Exhibit No. 6.

13. On May 5, 1916, after the institution of this suit, Harry M. Wagner and Harriet Cleveland Wagner, his wife, in consideration of the sum of \$1.00, conveyed to the State of Maryland "a right-of-way for the purpose of a street or highway over

and across that part of the tract of land situate in Anne Arundel County, in the State of Maryland, and constituting an island in the Patapsco River known as 'Reed Bird Island' * * *. It is further provided in said deed that the said Harry M. Wagner reserves "to himself the fee and reversion in said land, subject to the easement hereby granted and the right of access to the state road on each side thereof from his land by roadways which he may hereafter construct connecting with said right of way when and as such roadways are brought up to the grade of said highway, and the privilege of unloading material from said road upon his said land for grading the same". A copy of said deed is attached hereto marked Agreed Exhibit No. 7.

14. On or about December , 1940, H. Milton Wagner, Jr., and others, as successors to Harry M. Wagner's title to Reed Bird Island executed a deed to the Mayor and City Council of Baltimore of such part of Reed Bird Island as lay in the bed of Race Street, 70 feet wide, as opened by Ordinance of the Mayor and City Council of Baltimore, which deed has never been recorded. A copy of said deed is attached hereto as Agreed Exhibit No. 8. Said deed was executed by the grantors after they had appealed from a ruling of the Commissioner for Opening Streets awarding damages for the Reed Bird Island portion of said street to the Mayor and City Council; said appeal was dismissed, and the aforesaid deed was executed in consideration for the agreement of the Mayor and City Council to proceed with the prosecution of the proceedings in the present case, said deed, and dismissal of the aforesaid appeal to be without prejudice to the rights of the parties herein. Race Street as so opened and laid out is shown on Agreed Exhibit No. 9, marked "formerly Race Street" and colored in orange. This street is now part of Potee Street.

15. In 19 , the Mayor and City Council of Baltimore opened an extension of Potee Street across Reed Bird Island,

as shown on Agreed Exhibit No. 9, marked in blue; the land for which street the Mayor and City Council have never purchased from the successors in title to Harry M. Wagner, nor condemned. Said street is now being used without the permission or authority of the Respondents herein.

16. The plat of Parker W. Frames, dated August, 1954, attached hereto as Agreed Exhibit No. 9 is a true representation of the locations of streets and bridges in the Reed Bird Island area as presently laid out, with reference to the area included in the original patent for Reed Bird Island as granted to John P. Bruns as aforesaid. The acreages and distances for the various tracts shown thereon are approximately correct.

17. According to the tax records of Anne Arundel County, Harry M. Wagner was first assessed for "Reed Bird Island" for the year 1912, the said assessment totaling \$5,056.00, which was increased in the year 1918 to \$5950.00. Harry M. Wagner paid Anne Arundel County and State of Maryland taxes, based on said assessments, for 1912 through 1918. For the years 1919 to 1928, inclusive, Harry M. Wagner paid Baltimore City and State of Maryland taxes on Reed Bird Island in the total amount of \$1276.98. In 1926, after the City's purchase of certain Patapsco River shore land from South Baltimore Harbor and Improvement Company, et al., the City of Baltimore Law Department advised the Appeal Tax Court to abate any assessment against Harry M. Wagner or others upon "Reed Bird Island" but apparently this communication failed to reach the Appeal Tax Court, and it appears that taxes were paid through 1928. On May 23, 1928, the Appeal Tax Court was again notified to abate the assessment against Harry M. Wagner for "Reed Bird Island" and Harry M. Wagner was notified of such abatement and that he was entitled to a refund thereunder for the tax year 1928, of which, however, he never availed himself.

18. For some time prior to 1919 certain outdoor advertising billboards were located on Reed Bird Island. On February 21, 1919, attorneys for Harry M. Wagner wrote to the owners of these billboards demanding removal of the signs or rental from January 1, 1917. P. & H. Morton Advertising Co. paid rental from January 1, 1917, and renewed the rental for a subsequent period. American Sign Company also paid rental for sign space, paying \$70.77 for a number of signs for varying periods between January 1, 1919, and January 1, 1921, and executing a contract for an additional period at the rate of \$62.00 per annum. On January 14, 1924, General Outdoor Advertising Company entered into a contract for rental of space at the rate of \$93.00 per annum, for which rental was paid until April 25, 1928, at which time the City of Baltimore demanded that the owners of said signs cancel any agreements with the said Harry M. Wagner. Following that time the City of Baltimore collected rent from owners of the signs, holding the amounts received in escrow. Subsequently all billboards were removed from the Island.

19. In 1935 the City of Baltimore, through the Department of Public Works, applied to the U. S. District Engineer for authority to close six of the seven spans in the bridge connecting Reed Bird Island to the Brooklyn shore. This authority was granted by the Secretary of War on March 28, 1935, and subsequently these six spans were closed, leaving the seventh span open. On March 20, 1942, the City of Baltimore applied to the U. S. District Engineers for authority to close the last remaining span of this same bridge. Attached, as Agreed Exhibit No. 10, is a copy of chart and plans submitted to the U. S. District Engineer with said application of March 20, 1942. On April 20, 1942, the Secretary of War approved closure of the last remaining span and subsequently the City of Baltimore closed this span and filled in

and reclaimed the area lying between the Brooklyn shore and Reed Bird Island.

20. The twenty-five photographs filed with the Respondents' original answer are true representations of the scenes shown thereon from the point indicated on each of said photographs, at the date and time indicated.

21. The photographs attached hereto as Agreed Exhibits 11-A to 11- are true representations of the scenes shown thereon from the point indicated on each of said photographs, at the date and time indicated.

22. While the facts stated herein are agreed to exist as stated, each of the parties reserves the right to object to admissability of any of such facts on the grounds of relevancy, for purposes of which objections, if any be offered, each statement in each of the foregoing paragraphs shall be considered separately.

23. No advantage is to be taken by either party by reason of the delay in prosecuting or defending this suit.

Attorneys for Plaintiff

Attorneys for Respondent

Mr. J. H. Lee

COPY

CITY SOLICITOR'S OFFICE

Re: Reed Bird
Island

STIPULATION

--oOo--

It is hereby stipulated and agreed between Counsel for the parties hereto as follows:

1st: That on September 10th, 1909, a patent was issued out of the Land Office of Maryland to John P. Bruns for "a tract or parcel of land called 'Reed Bird Island', (being an island in the Patapsco River) lying in Anne Arundel County, State of Maryland, and containing 33 3/4 acres of land, more or less", as will more fully appear from a certified copy of said petition, which is filed herewith marked "Parties' Exhibit No. 1".

2nd: That the survey of Reed Bird Island made the 15th day of September, 1908, upon which the said patent was granted, contains the statements: "The above described land is not covered by navigable waters", and "Improvements: none"; that the description in said survey and the plat attached thereto describe "Reed Bird Island" as beginning on the "east side of Light Street Bridge distant from the bulkhead thereof 24 2/3 perches * * *". That said plat shows the said Light Street Bridge crossing "Reed Bird Island", as will more fully appear from a certified copy of the said survey and plat attached thereto, which is filed herewith marked "Parties' Exhibit No. 2".

3rd: That Chapter 215 of the Acts of 1856 authorized Richard Owens Crisp to construct a bridge over the Patapsco River from a point on the north side of said River called Ferry Bar to such point on the south side of said River in Anne Arundel County as the said Richard Owens Crisp might select. That the said Act also authorized the said Richard Owens Crisp "to enter upon and hold in fee any land necessary or proper for the

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abutments or piers of said bridge, and for other purposes contemplated by this Act; and for this purpose" to purchase or condemn such lands as he might deem necessary for the purposes aforesaid.

4th: That on May 25th, 1858, Richard Owens Crisp and Richard Cromwell, Jr., purchased from the Patapsco Company a certain lot of ground which is described in part as "Beginning at a stone planted on the southern shore of the Patapsco River at the water's edge northeasterly from the junction of said bridge, now called the Light Street Bridge, with the said south shore * * *". That a certified copy of said deed is recorded among the Land Records of Anne Arundel County in Liber W.H.G. No. 7, folio 207, and a certified copy thereof is attached hereto marked "Parties' Exhibit No. 3".

5th: That the said Light Street Bridge referred to in the said deed from the Patapsco Company to Richard Owens Crisp and Richard Cromwell, Jr., is the bridge authorized by Chapter 215 of the Acts of 1856, and the bridge referred to in the survey of "Reed Bird Island" and the plat accompanying the same.

6th: That Chapter 159 of the Acts of 1878 authorized, directed and empowered the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County to purchase said Light Street Bridge, together with the buildings, abutments and all other appurtenances thereto belonging or appertaining, if a price could be agreed upon with the owners thereof and if unable to agree with the owners thereof the said Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County were authorized, empowered and directed to build a substantial bridge over said river.

7th: That the bridge purchased or built as provided by said Act by the City and County and the cost of purchasing it and maintaining it was to be borne equally by the said City and County.

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8th: That on May 3, 1880, Richard O. Crisp and Annie E. Crisp, his wife, Richard Cromwell and Elizabeth Anne Cromwell, his wife, conveyed to the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County their interest in said bridge, together with the lot of ground hereinabove referred to, which they purchased from the Patapsco Company on May 25, 1858. The deed from Richard O. Crisp, et al., to the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County is recorded among the Land Records of Baltimore City in Liber F.A.P. No. 387, folio 369. It is likewise recorded in the Land Records of Anne Arundel County in Liber S.H. No. 16, folio 27.
as
A certified copy of said deed ~~was~~ recorded among the Land Records of Baltimore City is attached hereto, marked "Parties' Exhibit No. 4".

9th: That Section 27 of Chapter 98 of the Acts of 1888 (being the Annexation Act of 1888) provides in part that the said Light Street Bridge should thereafter "be maintained and kept in repair for public travel at the sole expense of said City of Baltimore * * ", and that the said City so maintained said bridge until sometime during the year 1917, when the said bridge was replaced by the present Hanover Street Bridge, as hereinafter set forth.

10th: That the said Light Street Bridge was a public highway between Baltimore City and Anne Arundel County used by all kinds of vehicular traffic as well as street cars and pedestrians.

11th: That Chapter 267 of the Acts of 1914 authorized the State Roads Commission to construct a bridge from Baltimore City to Brooklyn either directly or by way of the point of Baltimore County and provided that upon completion of the said bridge and the opening of the same to travel as a public highway the Mayor and City Council of Baltimore was authorized to remove or otherwise dispose of the present Light Street Bridge. That the

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bridge authorized by said Chapter 267 is known as the Light Street Bridge and was completed as set forth above during the year 1917.

12th: That by virtue of Chapter 82 of the Acts of 1918 there was annexed to Baltimore City certain portions of Baltimore County and Anne Arundel County, including Brooklyn in the latter. That under Section 9 of said Act the title of the County Commissioners of Anne Arundel County and Baltimore County, etc., in any school-houses and lots, etc., etc., and other public property became vested in the Mayor and City Council of Baltimore; and by Section 11 of said Act it was provided that all roads, streets, avenues and alleys lying within the annexed territory should be thereafter validly constituted public highways of Baltimore City, and that any bridges existing in any of said highways would to be considered as parts thereof. That all of the area referred to in this stipulation, including that formerly occupied by the Light Street Bridge, that now occupied by the Hanover Street Bridge and the lot conveyed by Crisp and Cromwell to the County Commissioners of Anne Arundel County and the Mayor and City Council of Baltimore on May 3rd, 1880, hereinabove referred to, are within the corporate limits of Baltimore City as enlarged by the said Chapter 82 of the Acts of 1918.

13th: That as will appear from the plat filed herewith as "Parties' Exhibit No. 3", it appears that the southern end of the Light Street Bridge in the first instance and later the southern end of the Hanover Street Bridge rest upon the said lot of ground originally purchased by the Mayor and City Council of Baltimore and Anne Arundel County from Richard O. Crisp, et al., on May 3, 1880.

14th: That on July 8th, 1924, the Mayor and City Council of Baltimore conveyed to the Standard Oil Company of New Jersey a part of the lot conveyed by Crisp and Cromwell to the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County on May 3, 1880, reserving

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to itself (as will more fully appear from "Parties' Exhibit No. ____")
"all riparian rights in and to the Patapsco River to which this property
is in any way entitled". The said deed from the Mayor and City Council
of Baltimore to the Standrad Oil Company is recorded among the Land Records
of Baltimore City in Liber S.C.L. No. 4250, folio 60. A certified copy
of said deed is attached hereto marked "Parties' Exhibit No. ____".

15th: That on April 15th, 1926, the South Baltimore Harbor and
Improvement Company of Anne Arundel County conveyed to the Mayor and City
Council of Baltimore for the consideration of \$50,000. certain property
and riparian rights designated on "Parties' Exhibit No. ____" as Lots
_____, as will more fully appear from said deed recorded in
Liber S.C.L. No. 4570, folio 49 among the Land Records of Baltimore City.
A certified copy of said deed is attached hereto marked "Parties' Exhibit
No. ____". (Our record of Abstracts of Titles - Vol. 437, folio 205).

16th: That this suit was instituted on March 28th, 1916, shortly
after the agents of the City discovered that the patent to "Reed Bird
Island" had been issued to the defendant, John P. Bruns.

17th: That on September 23, 1910, the said John P. Bruns, together
with one John McLeod and Minnie McLeod, his wife, executed a deed to the
said "Reed Bird Island" to the defendant, Harry M. Wagner, which deed is
recorded among the Land Records of Anne Arundel County in Liber G.W.
No. 83, folio 184. A certified copy of said deed is attached hereto marked
"Parties' Exhibit No. ____".

18th: On May 5th, 1916, after the institution of this suit, Harry
M. Wagner and Harriet Cleveland Wagner, his wife, in consideration of the
sum of \$1.00, conveyed to the State of Maryland "a right-of-way for the
purpose of a street or highway over and across that part or the tract of land
situate in Anne Arundel County, in the State of Maryland, and constituting

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CITY SOLICITOR'S OFFICE

an island in the Patapsco River known as 'Reed Bird Island' * * *".

It is further provided in said deed that the said Harry M. Wagner reserves "to himself the fee and reversion in said land, subject to the easement hereby granted and the right of access to the state road on each side thereof from his land by roadways which he may hereafter construct connecting with said right of way when and as such roadways are brought up to the grade of said highway, and the privilege of unloading material from said road upon his said land for grading the same".

19th: That on or about the _____ day of _____, 1926, after the purchase of the land and riparian rights of the South Baltimore Harbor and Improvement Company, etc., by the Mayor and City Council of Baltimore, the Law Department advised the Appeal Tax Court to abate any assessment against Harry M. Wagner or others upon "Reed Bird Island" but apparently this communication failed to reach the Appeal Tax Court, and from records thereof it appears that the said Harry M. Wagner paid State and City taxes to the Mayor and City Council of Baltimore and the State of Maryland for the years 1919 to 1928, inclusive, totaling \$1,276.98. That during the year 1928 it came to the attention of the City that there were several signs on "Reed Bird Island" which, it developed, were there through the permission of the said Harry M. Wagner, who was collecting rent from the owners of said signs. That the Mayor and City Council of Baltimore demanded of the owners of said signs that they cancel any agreements therefor with the said Harry M. Wagner, which was done on or about April 25th, 1928, since which time the Mayor and City Council of Baltimore has been collecting rent from the owners of said signs.

20th: That on May 23, 1928, the Appeal Tax Court was again notified to abate the assessment against Harry M. Wagner for "Reed Bird Island" and said Harry M. Wagner was notified of such abatement and was entitled to a refund thereunder ^{for} the tax year 1928, of which, however, he never availed himself.

COPY

CITY SOLICITOR'S OFFICE

21st: That the rental collected by the said Harry M. Wagner prior to the year 1928 for signs erected on said island amounted to \$_____.

22nd: That the amount for which said Harry M. Wagner was assessed for the said "Reed Bird Island" from 1919 to 1928 was \$5950.00. That according to the tax records of Anne Arundel County the said Harry M. Wagner was first assessed for "Reed Bird Island" for the year 1912, the said assessment totaling \$5,056.00, which was increased in the year 1918 to \$5950.00, - the amount of State and County taxes paid on account of said assessment amounting to approximately \$_____.

23rd: That during the year 1920 the Mayor and City Council of Baltimore had been requested by the United States Army Engineers to provide a dumping ground for certain material which would result from the dredging of a channel across Ferry Bar by the Federal Government. That on June 28, 1920, the said Harry M. Wagner, as the owner of "Reed Bird Island", and the owners of Mud and Bridge View Islands, gave the City an option to purchase these three islands for \$205,000.00. Copy of the option from Harry M. Wagner to purchase "Reed Bird Island", dated June 28, 1920, is attached hereto marked "Parties' Exhibit No. _____". That said options, however, were never exercised because the City Solicitor refused to approve the title of the said Harry M. Wagner and wife to said "Reed Bird Island".

24th: That the Patapsco River at the places mentioned herein is navigable and that the tide ebbs and flows at these locations. That this suit is the one referred to in the brief filed on behalf of Harry M. Wagner by Messrs. Marbury, Gosnell & Williams and _____ in the case of Melvin vs. Schlessinger, reported in 138 Md. _____.

25th: That no advantage is to be taken by either party of the delay in prosecuting or defending this suit.

copy ✓
PLAT
DEED
MORTGAGE
BILL OF SALE
RELEASE OF MORTGAGE
LEASE
J. P. JUDGMENT
ASSIGNMENT
MECHANICS LIEN
CERTIFICATE OF INCORPORATION
AGREEMENT
CONDITIONAL SALE
CHattel MORTGAGE
LAW
EQUITY

PAYABLE TO

CLERK \$ _____
SHERIFF \$ _____
SOLICITOR \$ _____
MISCL. \$ _____

CLERK OF CIRCUIT COURT

ANNE ARUNDEL COUNTY, MARYLAND

No. **A** 350

Annapolis, Md., 8 March 1934

Received of Paul F. Dew sum of \$ 1.50

for Mays & City Council of Balto.

Certified copy of To Record Harry M. Wagner

Case No. To the State of Md.

WM. MARTIN BRADY
FRANK S. REVELL, CLERK

BY L L M

General Correspondence in Reference to
Reed Bird Island

CITY SOLICITOR'S OFFICE

March 9th, 1934

Office of the Land Commissioner
Annapolis,
Maryland.

Dear Sir:

I wish to acknowledge receipt of copy of the patent for Reed Bird Island and of the plat and certificate of Reed Bird Island. I have today approved your bill for payment and check will be forwarded you for the amount thereof within a few days.

I notice, however, that these papers recite the fact that a special warrant for one acre was granted out of the Land Office of Maryland to John P. Bruns on September 10th, 1908.

From this it appears that there are probably additional papers among your records which will throw some light on this matter. I note from Section 26 of Article 54 of the Code that any person may obtain a special warrant by applying therefor and paying the sum of \$5.00. The application is required to state where the land lies and describe the same, and, as stated above, this application and the special warrant may be of some assistance to us. I shall, therefore, appreciate it if you will let me have certified copies of these papers and, upon receipt of your bill, I will send a check for the cost thereof.

Very truly yours,

PAUL F. DUE
Deputy City Solicitor

PFD/RRS

CITY SOLICITOR'S OFFICE

March 9, 1934.

Director of the Coast and Geodetic Survey,
Department of Commerce,
Washington, D. C.

Dear Sir:-

Will you kindly advise me if you have a plat or chart of the Patapsco River, in the vicinity of Baltimore City, as existed prior to the annexation in 1918, between what was then Baltimore City and Anne Arundel County and Baltimore County, for the year 1909.

If there is any charge for this information, kindly let me know.

Thanking you in advance for any information that you may give me, I remain

Very truly yours,

Frank Driscoll,
Assistant City Solicitor

FD:LN

CITY SOLICITOR'S OFFICE

March 7th, 1934

Mr. William Martin Brady, Clerk,
Circuit Court for Anne Arundel County,
Annapolis, Maryland.

Dear Sir:

In accordance with a telephone conversation with your office this afternoon, I am returning herewith receipt of today's date from you, per E. G. Owings, for \$8.00, representing cost of certified copies of respondents' Exhibit "B" and answer to amended supplemental bill of complaint in No. 4071 Equity.

Upon our return to the office we located copies of these papers but since you had already made a copy of Exhibit B, we shall pay for that. My recollection is that the cost thereof was \$1.50 and that the cost of the amended bill was to be \$6.50.

I shall appreciate your sending me another receipt for \$1.50 and a refund for the \$6.50.

Very truly yours,

PAUL F. DUE
Deputy City Solicitor

PF/D/RRS
Enc.

HOWARD W. JACKSON
MAYOR, EX-OFFICIO
HENRY D. HARLA
WILLIAM KALB
J. BARRY MAHOOL
ALLAN CLEAVELAND
BERNARD L. CROZIER
CHIEF ENGINEER, EX-OFFICIO
H. WEBSTER SMITH
CHAIRMAN



RALPH C. SHARRETTS
SECRETARY

PUBLIC IMPROVEMENT COMMISSION

CITY HALL

- Mud Islands -
South Shore Properties.

March 6th, 1934.

Mr. Paul F. Due,

Deputy City Solicitor.

Dear Sir:

I am enclosing a copy of each of the following papers having reference to the acquisition of fast land and riparian rights along the south shore of the Patapsco River between the Hanover Street Bridge and the Baltimore & Ohio R. R. Bridge:-

Memorandum dated 1/12/26. Ralph C. Sharretts.
Letter dated January 15th, 1926 - From Mr. Wyszecski.
Letter dated January 16th, 1926 - By Mr. Sharretts.
Letter dated February 4th, 1926 - By Mr. Sharretts.
Letter dated February 8th, 1926 - By Mr. Wyszecski.
Letter dated February 23rd, 1926 - By Mr. Sharretts.
Letter dated October 26th, 1927 - By Mr. Wyszecski.
Statement in matter of purchase of properties.

I have picked these out of a mass of very voluminous correspondence extending from about 1921 up to 1927, inclusive, that goes into this matter very fully but it would seem that the particular point involved in your present study of Reed Bird Island is covered in the above correspondence.

Yours very truly,

Ralph C. Sharretts
Secretary.

RCS:K
Enclosures (8)

28
Sept. 26, 1932.

Mr. Wyszecski:

Mr. Lee Rawls wants to come to my office one day this week, after 4 o'clock, accompanied by Mr. Charles Ruzicka and Mr. Kitner, to present the claims of the aforesaid gentlemen as patentees of Reed Bird Island. I want you to be present at the conference. Will you please call Mr. Rawls and make the appointment for any day this week that is convenient to you (after 4 o'clock). Mr. Rawls will notify the others.

R. E. L. M.

Wed Sept 28

4 P. M.

CITY SOLICITOR'S OFFICE

October 26th, 1927.

Mr. R. Walter Graham,
City Comptroller,
City Hall, City.

Dear Sir:-

I enclose herewith statement
of Account and Memorandum of Settlement, in the matter
of the acquisition of two lots of ground fronting on
First Street, Brooklyn, and Riparian Rights, from the
South Baltimore Harbor and Improvement Company.

Very truly yours,

(signed) Alfonso von Wyszecski.

ALFONSO von WYSZECKI,
Assistant City Solicitor.

AVW.

JHR.

Copy and enclosures to -

Mr. Sharretts
Mr. Beck

S T A T E M E N T
for the
COMPTROLLER.

In the matter of the acquisition of two lots of ground
fronting on First Street, Brooklyn, and the Riparian
Rights of the South Baltimore Harbor and Improvement
Company. Acquired for the Public Improvement
Commission.

- 0 -

April	26th, 1926 - Public Improvement Commission's Voucher No. 10638 -	\$50,000.00	
May	31st, 1927 - Public Improvement Commission's Voucher No. 14182 -	<u>0.30</u>	\$50,000.30
April	27th, 1926 - Check to South Baltimore Harbor and Improvement Company, Purchase Price - less portion of taxes -	\$49,953.63	
November	23rd, 1926 - Check to City Collector - Taxes -	<u>46.67</u>	\$50,000.30

HOWARD W. JACKSON
MAYOR, EX-OFFICIO
JACOB EPSTEIN
HENRY D. HARLAN
WILLIAM KALB
J. BARRY MAHOOL
BERNARD L. CROZIER
CHIEF ENGINEER, EX-OFFICIO
ROBERT GARRETT
CHAIRMAN
RALPH C. SHARRETT
SECRETARY
H. G. PERRING
SUPERVISING ENGINEER



27127

PUBLIC IMPROVEMENT COMMISSION
517 HEARST TOWER BUILDING
BALTIMORE AND SOUTH STREETS

Mud Islands - Dredging and
South Shore Riparian Rights.

September 8th, 1926.

Mr. Alfonso von Wyszecski,
Asst. City Solicitor.

Dear Sir:

You will recall, at the time we bought the one hundred foot strip from the South Baltimore Harbor & Improvement Co. that according to your theory the title search developed the fact that the City bought the riparian rights contiguous to this strip not only between the two bridges but some distance above and below the Hanover Street Causeway. If this is true and if another principle that has been developed in our Mud Island cases is true; viz:- that a riparian owner owns to the center of the channel to an extent proportionate to his riparian frontage, then the City has become the owner of a large part if not all of the lower portion of Reed Bird Island. There may be some modification of this conclusion because of the extension through a portion of this area of the old Light Street Bridge.

The Public Improvement Commission and the City of Baltimore are interested in this area for several reasons, two of which occur to me at the present time:-

1. Protection of the present Hanover Street Causeway and its foundations which, according to the engineers, have spread out considerably beyond that portion which has been utilized for paving of sidewalks.

Mr. Alfonso von Wyszecski,
Asst. City Solicitor.

- 2 -

Sept. 8, 1926.

2. Tentative plans have been drawn and the suggestion made for the extension of piers below Hanover Street Causeway.

Both of these reasons, if carried out, require a retention of as much solid foundation as possible and any reduction in present bottom or foundation would mean added cost later especially if the plan for pier development should mature.

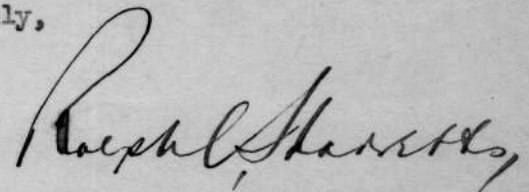
I explained this situation to the Commission at its Meeting held August 30th, 1926, informing them at the same time that a dredge was at work that morning and that similar work had been carried on previously during the summer, taking out sand and gravel from the area above described. I raised the question as to whether the City had the right to stop this and whether, under the conditions here, it is not the part of wisdom to do so.

In view of the legal questions of title, etc., involved, I was asked to take the matter up with you and the City Solicitor.

I shall be glad to discuss with you further details in this connection if desirable and the Commission will appreciate an opinion from you as to its rights and those of the City in this matter, and also the method of asserting them.

I may say that the Harbor Engineer called me up the day after our meeting and, when informed of the dredging, promised to have it stopped at once. I imagine he has certain prerogatives irrespective of the legal phases of the situation first presented in this letter.

Yours very truly,


Secretary.

K. Copy to:
Mayor Jackson,
Mr. Crozier,
Mr. McKinney,
Port Development Comm.

CITY SOLICITOR'S OFFICE

from file 27127

February 27th, 1926.

Appeal Tax Court,
City Hall,
City.

Gentlemen:-

I have written to you today a letter regarding the abatement of taxes on property lying on the Patapsco River, by reason of the City purchasing the riparian rights in some of the land.

I wish also to call your attention to the fact that the Law Department has ruled that all Islands belong to the adjoining property holders and not to the patentees of these Islands, which ruling has been sustained by the Court of Appeals.

If any of these patentees are still charged taxes on their land, I wish you would have them taken off the books and place the assessment on the adjoining property holders.

This will affect particularly the property lying on the Anne Arundel County side, as the Baltimore County side has been purchased by the Mayor and City Council of Baltimore.

Yours very truly,

ALFONSO von WYSZECKI,
Assistant City Solicitor.

AVW.
JHR.

CITY SOLICITOR'S OFFICE

February 27th, 1926.

Appeal Tax Court,
City Hall,
City.

Gentlemen:-

Mr. Mylander and Mr. Sanford called on me the other day with their tax bills for the property on the Patapsco River, part of which tract has been purchased by the Mayor and City Council, and it appears that no abatement has been made for the taxes for this year. I therefore enclose a plat showing exactly the properties which the City has purchased during the year 1925, in that section.

FIRST: From the property assessed to the John Klein Estate, the City purchased 5.07 acres which lies North of the Hanover Street Bridge, including its riparian rights, for \$64,120.00. It also purchased from the same estate 10.86 acres, including the riparian rights, for \$21,000.00. I understand that the remaining ten acres belonging to the Klein Estate has since been sold for \$18,000.00.

SECOND: From the Mason Amusement Corporation the City purchased 6.06 acres of riparian rights for \$4050.00. This property appears on your books as the Wonderland Park.

THIRD: From John W. Hodges the City purchased 7.9 acres of riparian rights for \$5078.00.

FOURTH: From John L. Sanford the City purchased 9.5 acres of riparian rights for \$6300.00. This is part

CITY SOLICITOR'S OFFICE

Page two.

Appeal Tax Court.

of the tract which was assessed for 1925 taxes for \$8110.00, the same assessment is still on for 1926. And on Mr. Sanford's assessment I also wish to call your attention to another tract of land of about ten acres, which adjoins the Klein property sold a few days ago for \$18,000.00, having the same dimensions which is assessed for over \$40,000.00.

FIFTH: The tract assessed to Anton Harensky the City purchased about 11 acres of riparian rights for \$3600.00.

SIXTH: The tract of Ambrose Loukaitis of which the City purchased 51.71 acres of riparian rights for \$16,800.00.

In the trial of all these cases, Mr. Gilbert and Mr. Dennis of your Court, were called upon to testify as experts showing to what extent the value of the fast land was decreased in taking away the riparian rights, and they undoubtedly can give the Court the present valuation of the land which the parties still own.

Will you kindly, therefore, order such abatement on these properties as you think proper and charge the other properties to the Mayor and City Council of Baltimore.

Yours very truly,

ALFONSO von WYSZECKI,
Assistant City Solicitor.

AVW.
JHR.

HOWARD W. JACKSON
MAYOR, EX-OFFICIO
JACOB EPSTEIN
HENRY D. HARLAN
WILLIAM KALB
J. BARRY MAHOOL
BERNARD L. CROZIER
CHIEF ENGINEER, EX-OFFICIO
ROBERT GARRETT
CHAIRMAN
RALPH C. SHARRETT
SECRETARY
H. G. PERRING
SUPERVISING ENGINEER



PUBLIC IMPROVEMENT COMMISSION
517 HEARST TOWER BUILDING
BALTIMORE AND SOUTH STREETS

Mud Islands - South Shore -
South Balto. H. & I. Co. Holdings.

February 23rd, 1926.

Mr. Alfonso von Wyszecski,
Asst. City Solicitor.

Dear Sir:

The following excerpt from the Minutes of the Meeting held February 15th, 1926, by the Public Improvement Commission, will advise you of the action taken with regard to matters set forth therein. Where required, you are requested to take the necessary steps to effect the wishes of the Commission insofar as your office is concerned:-

"A letter from Asst. City Solicitor Wyszecski, dated February 8th, 1926, was read, confirming statement of facts made before the Commission at a previous meeting relative to the acquisition of the two tracts held by the South Baltimore Harbor & Improvement Co. fronting on First Street - Brooklyn - 400 ft. and 59 ft. respectively and running to the shore line together with their right, title and interest in and to the 100 ft strip running from a point above the Baltimore & Ohio R. R. Bridge - between Potomac and Washington Streets - to a point east of the Hanover Street Bridge, and all their riparian rights growing out of their ownership of the said 100 ft. strip for a total consideration of \$50,000.00.

The Secretary reported that \$35,000.00 had been previously approved for acquiring riparian rights along the south shore of the patapsco River between the Hanover Street Bridge and the Baltimore & Ohio R. R. Bridge and that it would require \$15,000.00 additional, plus appraisal fees, recording fees, etc. estimated at \$500.00.

Upon

MOTION of Judge Harlan, seconded by Mr. Mahool, an allotment of \$15,500.00 in addition to the \$35,000.00 previously provided was approved and the City Solicitor was requested to consummate the negotiations with the South Baltimore Harbor & Improvement Co. for their holdings described above at a price not to exceed \$50,000.00."

Yours very truly,

Ralph C. Sharrett
Secretary.

K. Copy to:
Port Devel. Comm.
Mr. McKinney,
Mr. Crozier,
Mr. Wyszecski.

HOWARD W. JACKSON
MAYOR, EX-OFFICIO

JACOB EPSTEIN
HENRY D. HARLAN
WILLIAM KALB
J. BARRY MAHOOL
STEWART PURCELL
CHIEF ENGINEER, EX-OFFICIO
ROBERT GARRETT
CHAIRMAN

RALPH C. SHARRETT
SECRETARY

H. G. PERRING
SUPERVISING ENGINEER



PUBLIC IMPROVEMENT COMMISSION

517 HEARST TOWER BUILDING

BALTIMORE AND SOUTH STREETS

Mad Islands - South Shore -
South Balto. H. & I. Co. Holdings.

February 23rd, 1926.

Mr. Alfonso von Wyzsecki,
Asst. City Solicitor.

Dear Sir:

The following excerpt from the Minutes of the Meeting held February 18th, 1926, by the Public Improvement Commission, will advise you of the action taken with regard to matters set forth therein. Where required, you are requested to take the necessary steps to effect the wishes of the Commission insofar as your office is concerned:-

"A letter from Asst. City Solicitor Wyzsecki, dated February 8th, 1926, was read, confirming statement of facts made before the Commission at a previous meeting relative to the acquisition of the two tracts held by the South Baltimore Harbor & Improvement Co. fronting on First Street - Brooklyn - 400 ft. and 59 ft. respectively and running to the shore line together with their right, title and interest in and to the 100 ft strip running from a point above the Baltimore & Ohio R. R. Bridge - between Potomac and Washington Streets - to a point east of the Hanover Street Bridge, and all their riparian rights growing out of their ownership of the said 100 ft. strip for a total consideration of \$50,000.00.

The Secretary reported that \$35,000.00 had been previously approved for acquiring riparian rights along the south shore of the Patapsco River between the Hanover Street Bridge and the Baltimore & Ohio R. R. Bridge and that it would require \$15,000.00 additional, plus appraisal fees, recording fees, etc. estimated at \$500.00.

Upon

MOTION of Judge Harlan, seconded by Mr. Mahool, an allotment of \$15,500.00 in addition to the \$35,000.00 previously provided was approved and the City Solicitor was requested to consummate the negotiations with the South Baltimore Harbor & Improvement Co. for their holdings described above at a price not to exceed \$50,000.00."

Yours very truly,

Secretary.

K. Copy to:
Port Devel. Comm.
Mr. McKinney,
Mr. Crozier,
Mr. Wyzsecki.

CITY OF BALTIMORE

DEPARTMENT OF LAW

217 COURT HOUSE

BALTIMORE, MD.

February 8th, 1926.

Mr. Ralph C. Sharretts, Secretary,
Public Improvement Commission,
#517 Hearst Tower Building,
Local.

Dear Mr. Sharretts:-

This office is in receipt of your letter of the 4th instant, in which is embodied an excerpt from the Minutes of the Meeting of your Commission held January 25th, 1926, regarding the holdings of the South Baltimore Harbor and Improvement Company on the Patapsco River, and in which you request confirmation from us as to the correctness of the facts set forth in said excerpt.

Replying thereto we would advise that your letter correctly states the facts relating to the situation, and we desire hereby to confirm the same.

Yours very truly,

(signed) Alfonso von Wyszecski

ALFONSO von WYSZECKI
Assistant City Solicitor.

AVW
JHR

CITY SOLICITOR'S OFFICE

February 8th, 1926.

Mr. Ralph C. Sharretts, Secretary,
Public Improvement Commission,
#517 Hearst Tower Building,
local.

Dear Mr. Sharretts:-

This office is in receipt of your letter of the 4th instant, in which is embodied an excerpt from the Minutes of the Meeting of your Commission held January 25th, 1926, regarding the holdings of the South Baltimore Harbor and Improvement Company on the Patuxent River, and in which you request confirmation from us as to the correctness of the facts set forth in said excerpt.

Replying thereto we would advise that your letter correctly states the facts relating to the situation, and we desire hereby to confirm the same.

Yours very truly,

ALFONSO von WYSZECKI,
Assistant City Solicitor.

AVS.
JHR.

HOWARD W. JACKSON
MAYOR, EX-OFFICIO

JACOB EPSTEIN

HENRY D. HARLAN

WILLIAM KALB

J. BARRY MAHOOL

STUART PURCELL
CHIEF ENGINEER, EX-OFFICIO

ROBERT GARRETT
CHAIRMAN

RALPH C. SHARRETT
SECRETARY

H. G. PERRING
SUPERVISING ENGINEER



PUBLIC IMPROVEMENT COMMISSION

517 HEARST TOWER BUILDING

BALTIMORE AND SOUTH STREETS

Mud Islands - Acquiring
South Shore Properties, etc.

February 4th, 1926.

Mr. Wirt A. Duvall, Jr.,
City Solicitor.

Dear Sir:

The following excerpt from the Minutes of the Meeting held January 25th, 1926, by the Public Improvement Commission, will advise you of the action taken with regard to matters set forth therein. Where required, you are requested to take the necessary steps to effect the wishes of the Commission insofar as your office is concerned:-

"The Secretary presented and read a memorandum, dated January 12th, 1926, the result of a conference he had had with Asst. City Solicitor Wyszecski, wherein the following information was outlined:-

That Mr. Wyszecski, from abstracts of titles in the office of the City Solicitor, and through conferences, has ascertained that The South Baltimore Harbor & Improvement Co. is the successor of The Patapsco Company; that the latter company had sold certain properties on the southwest side of First Street between the Old Light Street Bridge and the B. & O. R. R. bridge; that those properties had been resold to other owners, one being The South Baltimore Harbor & Improvement Co.; that the Patapsco Co., after selling the above mentioned properties, took out a 'Patent of Resurvey' for their entire holdings (8,000 acres), this patent going further than any patent ever before granted in Maryland; it not only granting the fast land but also a strip bordering on the fast land extending 100 ft. out into the Patapsco River; that Mr. Wyszecski thinks the Court of Appeals would rule that the Patapsco Company, or its successor, is still the owner of the said 100 ft. strip of riparian rights and, if this is true, all of the islands formed and for which patents have been issued since 1864, would go to the Patapsco Company or its successors; that the South Baltimore Harbor & Improvement Co. is holding two tracts - fronting on First Street 400 ft. and 59 ft. respectively, and running to the shore line - their right title and interest in and to the 100 ft. strip running from a point above the B. & O. R. R. Bridge - between Potomac and Washington Streets - to a point east of the Hanover Street Bridge, and all their riparian rights growing out of their ownership of the said 100 ft. strip

HOWARD W. JACKSON
MAYOR, EX-OFFICIO

JACOB EPSTEIN

HENRY D. HARLAN

WILLIAM KALB

J. BARRY MAHOOL

BERNARD L. CROZIER
CHIEF ENGINEER, EX-OFFICIO

ROBERT GARRETT
CHAIRMAN

RALPH C. SHARRETT
SECRETARY

H. G. PERRING
SUPERVISING ENGINEER



per file 27127

PUBLIC IMPROVEMENT COMMISSION

517 HEARST TOWER BUILDING

BALTIMORE AND SOUTH STREETS

Mud Islands - Acquiring
South Shore Properties, etc.

February 4th, 1926.

Mr. Wirt A. Duvall, Jr.,
City Solicitor.

Dear Sir:

The following excerpt from the Minutes of the Meeting held January 25th, 1926, by the Public Improvement Commission, will advise you of the action taken with regard to matters set forth therein. Where required, you are requested to take the necessary steps to effect the wishes of the Commission insofar as your office is concerned:-

"The Secretary presented and read a memorandum, dated January 12th, 1926, the result of a conference he had had with Asst. City Solicitor Wyszecski, wherein the following information was outlined:-

That Mr. Wyszecski, from abstracts of titles in the office of the City Solicitor, and through conferences, has ascertained that The South Baltimore Harbor & Improvement Co. is the successor of The Patapsco Company; that the latter company had sold certain properties on the southwest side of First Street between the Old Light Street Bridge and the B. & O. R. R. bridge; that these properties had been resold to other owners, one being The South Baltimore Harbor & Improvement Co.; that the Patapsco Co., after selling the above mentioned properties, took out a 'Patent of Resurvey' for their entire holdings (3,000 acres), this patent going further than any patent ever before granted in Maryland; it not only granting the fast land but also a strip bordering on the fast land extending 100 ft. out into the Patapsco River; that Mr. Wyszecski thinks the Court of Appeals would rule that the Patapsco Company, or its successor, is still the owner of the said 100 ft. strip of riparian rights and, if this is true, all of the islands formed and for which patents have been issued since 1864, would go to the Patapsco Company or its successors; that the South Baltimore Harbor & Improvement Co. is holding two tracts - fronting on First Street 400 ft. and 59 ft. respectively, and running to the shore line - their right title and interest in and to the 100 ft. strip running from a point above the B. & O. R. R. Bridge - between Potomac and Washington Streets - to a point east of the Hanover Street Bridge, and all their riparian rights growing out of their ownership of the said 100 ft. strip

Mr. Wirt A. Duvall, Jr.,
City Solicitor.

- 2 -

Feb. 4, 1926.

at \$57,500.00. The Secretary then pointed out that the appraised value of the fast land mentioned above has been given as \$28,600.00 and that the estimated value of the riparian rights - based on acreage prices paid for riparian rights on the north shore of the Patapsco River - was \$34,000.00. After brief discussion on the subject,

Upon

MOTION of Mayor Jackson, seconded by Judge Harlan, it was ordered that a formal letter be requested of the City Solicitor or Asst. City Solicitor Wyszecski, confirming the information outlined in the above memorandum."

Yours very truly,



Secretary.

K. Copy to:
Mr. Wyszecski,
Mr. Crozier,
Mr. McKinney,,
Port Development Comm.

Mid Islands - Acquiring
South Shore Properties, etc.

February 4th, 1926.

Mr. Wirt A. Duvall, Jr.,
City Solicitor.

Dear Sir:

The following excerpt from the Minutes of the Meeting held January 25th, 1926, by the Public Improvement Commission, will advise you of the action taken with regard to matters set forth therein. Where required, you are requested to take the necessary steps to effect the wishes of the Commission insofar as your office is concerned:-

"The Secretary presented and read a memorandum, dated January 12th, 1926, the result of a conference he had had with Asst. City Solicitor Wyszocki, wherein the following information was outlined:-

That Mr. Wyszocki, from abstracts of titles in the office of the City Solicitor, and through conferences, has ascertained that The South Baltimore Harbor & Improvement Co. is the successor of The Patapesc Company; that the latter company had sold certain properties on the southwest side of First Street between the Old Light Street Bridge and the D. & O. R. R. bridge; that these properties had been resold to other owners, one being The South Baltimore Harbor & Improvement Co.; that the Patapesc Co., after selling the above mentioned properties, took out a 'Patent of Re-survey' for their entire holdings (3,000 acres), this patent going further than any patent ever before granted in Maryland; it not only granting the flat land but also a strip bordering on the flat land extending 100 ft. out into the Patapesc River; that Mr. Wyszocki thinks the Court of Appeals would rule that the Patapesc Company, or its successor, is still the owner of the said 100 ft. strip of riparian rights and, if this is true, all of the islands formed and for which patents have been issued since 1864, would go to the Patapesc Company or its successors; that the South Baltimore Harbor & Improvement Co. is holding two tracts - fronting on First Street 400 ft. and 52 ft. respectively, and running to the shore line - their right title and interest in and to the 100 ft. strip running from a point above the D. & O. R. R. Bridge - between Potomac and Washington Streets - to a point east of the Hammer Street Bridge, and all their riparian rights growing out of their ownership of the said 100 ft. strip

(OVER)

Mr. Wirt A. Duvall, Jr.,
City Solicitor.

- 2 -

Feb. 4, 1926.

at \$57,800.00. The Secretary then pointed out that the appraised value of the first land mentioned above has been given as \$28,600.00 and that the estimated value of the riparian rights - based on average prices paid for riparian rights on the north shore of the Patuxent River - was \$34,000.00. After brief discussion on the subject,

Upon

MOTION of Mayor Jackson, seconded by Judge Harlan, it was ordered that a formal letter be requested of the City Solicitor or Asst. City Solicitor Wysocki, confirming the information outlined in the above memorandum."

Yours very truly,

R. Copy to:
Mr. Wysocki,
Mr. Grosier,
Mr. McKinney,,
Port Development Comm.

Secretary.

CITY OF BALTIMORE

DEPARTMENT OF LAW

217 COURT HOUSE

BALTIMORE, MD.

January 15th, 1926.

Mr. Ralph C. Sharretts, Secretary,
Public Improvement Commission,
#517 Hearst Tower Building,
Local.

Dear Mr. Sharretts:-

I thank you for sending me the copy of your stenographic notes taken by you at our conference the other day, regarding the Patapsco Flats situation, in which I would ask that you make a few changes.

Your second paragraph states that "I base my information upon the original deeds which were in the hands of the South Baltimore Harbor and Improvement Company". You will appreciate this is incomplete, as my information was obtained primarily from the abstracts of titles and files in this office which have been accumulating for the last five years, and also from a constant association with the matter by way of conferences, etc. This information was supplemented by a personal visit to the Office of the South Baltimore Harbor and Improvement Company, where the original deeds and plate were placed at my disposal and I had an opportunity of inspecting them.

In the third paragraph, the fourth line from the bottom, I would suggest that you eliminate the words "the middle of" so that it will read "running out into the Patapsco River".

In the fifth paragraph I would suggest that the same be made to read "it would seem under the reasoning used by the Court of Appeals in the Billiken Island case".

In asking you to make these changes, I do not wish to infer that your notes were not absolutely correct, but the changes suggested themselves to me after reading the report of our interview.

Yours very truly,

(signed) Alfonso von Wyszecski.

ALFONSO von WYSZECKI.
Assistant City Solicitor.

AVW
JHR

PUBLIC IMPROVEMENT COMMISSION

BALTIMORE, MD.

January 16th, 1926.

-Mud Islands-
South Shore properties.

Mr. Alfonso von Wyszecski,
Asst. City Solicitor.

Dear Mr. Wyszecski:-

I beg to acknowledge receipt of and thank you for your letter of the 15th instant, offering suggestions pursuant to clarifying my write-up of January 12th, in connection with the status of the South Shore properties - Mud Islands.

The 1st. page of the report has been re-written, incorporating your suggestions, that being the only page affected; a copy is enclosed herewith for your information and with the request that you substitute it for the one previously sent you.

Yours very truly,

(signed) Ralph C. Sharretts.

Secretary.

H-encl.

HOWARD W. JACKSON
MAYOR, EX-OFFICIO

JACOB EPSTEIN

HENRY D. HARLAN

WILLIAM KALB

J. BARRY MAHOOL

STUART PURCELL
CHIEF ENGINEER, EX-OFFICIO

ROBERT GARRETT
CHAIRMAN

RALPH C. SHARRETT
SECRETARY

H. G. PERRING
SUPERVISING ENGINEER



PUBLIC IMPROVEMENT COMMISSION

517 HEARST TOWER BUILDING

BALTIMORE AND SOUTH STREETS

Mad Islands -
South Shore Rights.

December 2nd, 1925.

Mr. Philip B. Perlman,
City Solicitor.

Dear Sir:

The following excerpt from the Minutes of the Meeting held November 23rd, 1925, by the Public Improvement Commission, will advise you of the action taken with regard to matters set forth therein. Where required, you are requested to take the necessary steps to effect the wishes of the Commission insofar as your office is concerned:-

"City Solicitor Perlman and Asst. City Solicitor Wyszecki placed before the Commission certain facts with regard to the acquisition of the riparian rights along the south shore of the Patapsco River within the confines of the Hanover Street and B. & O. R. R. Bridges; the latter stating that he understood from the representative of the South Baltimore Harbor & Improvement Co. that they controlled all the riparian rights of the properties facing on First Street in Brooklyn between the Hanover Street Bridge and the B. & O. R. R. Bridge and stated that he felt by purchasing the holdings of this company, fronting approximately 450 ft. on First Street with depths of from 40 ft. to 130 ft. to the river, the City would be in a better position to deal with the patentees of Bridgeview and Reedbird Islands. It was brought out that Mr. Wyszecki was not certain that by buying the Improvement Company's east land the riparian rights along the shore line would be included, nor was he certain that by the above purchase consideration of the claims of the patentees of the islands would be eliminated. Finally, Upon

MOTION of Mr. Mahool, seconded by Mr. Kalb, the Chairman and the Secretary were asked to confer with Asst. City Solicitor Wyszecki on the matter and report back."

Yours very truly,

K. Copy to
Mr. Wyszecki,
Port Dev. Comm.
Harbor Engineer.
R. E. Committee.

Ralph C. Sharrett
Secretary.

1/12/26.

MUD ISLANDS - South Shore properties.

Information developed at a conference between Messrs. Wyszecki and Sharretts, being a preliminary conference to one to be held between Messrs. Garrett, Wyszecki and Sharretts, in connection with the proposed purchase of the Brooklyn side of the Patapsco River, lying between Hanover Street and the B&O RR tracks.

The information affecting the titles to this property was obtained primarily by Mr. Wyszecki from the abstracts of titles and files in the City Solicitor's office, which have been accumulating for the last five years, and also from a constant association with the matter by way of conferences, etc. This information was supplemented by a personal visit by Mr. Wyszecki to the office of the South Balto. Harbor & Imp. Co., where the original deeds and plats were placed at his disposal and he had an opportunity of inspecting them.

The So. Balto. Harbor & Imp. Co. is the successor to the Patapsco Co., which owned about 3000-acres of fast land. The Patapsco Company at one time sold from their holdings to a Mr. Severs, in 1857, the frontage on the South-West side of First Street, lying between the then Hanover Street Bridge and the B&O RR. Severs in turn sold at different times to the individual owners, or their predecessors, the lots as indicated on the various maps that we have had before the Commission. Among these owners, as will be noted, is the So. Balto. Harbor & Imp. Co., the successors to the original grantors, the Patapsco Company. After the Patapsco Company had sold the property to Severs, in 1857, it took out what was known as a "Patent of Re-Survey" for the whole tract of 3000-acres. This occurred on December 1st 1858. This Patent of Re-Survey went further than any patent that had ever been granted in the State of Maryland. It not only granted the fast land but it granted 100-ft. bordering on this fast land and running out into the Patapsco River. At that time, 1858, the State could grant a good patent for land still under water; its principal use was in connection with oyster bars.

In the opinion of Mr. Wyszecki, the Court of Appeals, if the matter came before it, would hold that the Patapsco Company, or its successor, is still the owner of the 100-ft. from the shore line out into the Patapsco River. If this is the case all of the islands which were formed and for which patents have been issued in 1890, or thereabouts, or in fact since 1864, would go to the Patapsco Company, and not the owners of the properties on the shore line, because the 100-ft. would intervene between the shore line and the islands. This patent was taken out after the sale to Severs, and after his sale to the individual property owners along First St., and it would appear to be good as against them.

It would seem that under the reasoning used by the Court of Appeals in the Billiken Island case, a comparatively recent decision, that the islands lying between this 100-ft. strip and the center of the Patapsco River would belong to the owners of the 100-ft. strip, these owners being the So. Balto. Harbor & Imp. Co., the successors to the Patapsco Company, this opinion effectively nullifying the right of any of the claimants to any of the islands in the Patapsco under patents issued subsequent to 1864.

The So. Balto. Harbor & Imp. Co. is at present the owner of two tracts of fast land which they purchased from Severs on First Street, one being 400' front and running up the shore line from Hanover Street Bridge, and the other being just above this, but separated from it, by one lot, having a frontage of 59' on First Street; these two tracts being "A" and "C" on a plat, copy of which we have in the office, dated November 21st 1924.

The asking price by the So. Balto. Harbor & Imp. Co. for -

- (a) All their right, title and interest in the fast land herein described;
 - (b) All their right, title and interest in the 100' strip hereafter more accurately defined; and
 - (c) All their riparian rights growing out of their ownership of the 100' strip, under the interpretation of the law herein set forth,
- is \$125.00 a front foot for the 459' of fast land on First Street, namely,.....\$ 57,500.00.

The President of the So. Balto. Harbor & Imp. Co. (Mr. Rayner) stated that he would submit to the directors of his Company an offer of\$ 50,000.00, which in the opinion of Mr. Wyszecski is tantamount to its acceptance.

We have received an appraisal from our Committee indicating a value of this fast land of the So. Balto. Harbor & Imp. Co. of.....\$ 28,600.00, leaving a valuation on the submerged land, which would include all the submerged land we want, of.....\$ 21,400.00.

As hereafter explained the purchase of this land would give us considerably more submerged land that lies between the Hanover Street and the B&O RR, but confining ourselves at this time to the land lying within these two boundaries, this would give us a comparative price to the \$614.00 per acre paid for land on the North side to..... 389.10 per acre to be paid for the South shore.

The 100' strip involved in this proposition extends well beyond the B&O RR bridge up the river and below to Hanover Street Bridge, down to the land sold to the Arundel Company. The ends of this 100' strip have thus far never been definitely fixed.

Mr. Wyszecski suggests that if we confine ourselves to the purchase of the fast land belonging to the So. Balto. Harbor & Imp. Co., namely, 459' on First Street, we would secure thereby a title that would be good against anyone in the area in which we are principally interested. Of course, we would get no title to the property owned by the other individuals fronting on First Street, but it has been determined by the Commission that we are not interested in these properties. We would have no difficulty in selling off this 459' at any time we desire.

That portion of the 100' strip that lies below Hanover Street would give the City, as owner, the riparian rights to the property lying between such 100' strip and the center of the Patapsco River, and lying between Hanover Street and the Arundel Co's. property; that section lying above the B&O RR bridge would likewise give the City the ownership of the property lying between the strip and the center of the river. While, as above stated, the upper end of this strip has never been definitely located, it lies somewhere along the shore line between Potomac and Washington Streets extended.

At one stage of the discussion of this matter before the Commission the question arose as to what we bought when we paid the Jung interests \$7,000.00. Mr. Wyszecski has cleared this point up by his reference to the Billiken Island proceedings of the Court of Appeals, which denied the rights of the patentees to any of the islands claimed by them, so that the amount paid Jung by the Commission was simply to secure dismissal of the appeal that he had filed.

Ralph C. Sharretts.

January 12th 1926.

RCS-h

CITY SOLICITOR'S OFFICE

perman file 27127

November 18th, 1925.

Philip B. Perlman, Esq.,
City Solicitor,
Court House, Local.

Dear Mr. Perlman:-

In re: Acquisition of
Riparian Rights on the
East side of the Patapsco
River.

I beg to report to you in
regard to my negotiation with the South Baltimore Harbor
and Improvement Company of Arundel County, in the above
matter.

This Company is the successor
of the Patapsco Company, which was the original owner of
the tract called Brooklyn. The Patapsco Company, on
December 4th, 1858, obtained a patent of Brooklyn on a
special warrant for resurvey of a tract containing 2735
acres, more or less. In the description of the patent
the following language is used:

"Thence running with and bounding on
the second line of said conveyance, north
138-1/11 perches into the waters of the
Patapsco River, which place or spot is
100 feet from the shore or water edge out
into the Patapsco River; thence running
parallel to the shore lines of the Duck
Cove and keeping at the distance of 100
feet FROM THE SAID SHORE, etc."

The South Baltimore Harbor and
Improvement Company has sold at various times different lots
and all the descriptions called to the east or the south shore
of the Patapsco River, and run thence with the meanders of the
shore of said river. The Company is still the owner of two

CITY SOLICITOR'S OFFICE

Page two.

lots, one fronting 400 feet on First Street with a depth of about 106 feet to the Patapsco River. This lot has an acreage of riparian rights of about 13;706 acres; and the other lot fronting 59 feet on First Street with a depth of 140 feet to the Patapsco River, and has an acreage of riparian rights of 1.88 acres.

The City has paid for the riparian rights at the rate of \$600.00 an acre, which would make the riparian rights worth \$9,351.00. The Real Estate Committee appraised the fast land on First Street at \$28,600.00, making a total of \$37,951.00 for the holdings of the South Baltimore Harbor and Improvement Company.

COPY
I have been unable to get a price for just the riparian rights, as the Company wishes to sell all its interests in said land, it being about the only land which the Company has left. The price the Company has set for said land and all its riparian rights is \$58,000.00. Mr. Albert W. Rayner, President of the Company, intimated that \$50,000.00 would be accepted.

I have given a great deal of thought to the language in the patent, and as this patent was taken out prior to the Act of 1862, the patent will hold good even if at that time it included land covered by navigable waters.

The title of the South Baltimore Harbor and Improvement Company to 100 feet beyond the shore lines being good, the question arises whether the deeds from the Company to the various purchasers of the several lots stopped at the shore lines or whether by construction they would include also the 100 feet beyond the shore line.

From examining all the papers in the matter, I am of the opinion that the South Baltimore Company intentionally excluded their rights in the 100 feet beyond the shore line from all the deeds they have made, and that the Company did this so that they might retain control of the shore lines along the entire extent of their holdings. This would seem reasonable, because otherwise a purchaser of one lot might have extended a pier or carried on some other operation which

CITY SOLICITOR'S OFFICE

Page three.

would have been objectionable or detrimental to their remaining property. If this view is accepted, it would appear that no riparian rights passed to the separate lots and if all the interests of the South Baltimore Company in the 100 foot strip is acquired, the City would not be obligated to compensate the owners of the separate lots for any riparian rights.

And further, Reed Bird Island and Bridge View Island are lying partly in the 100 foot strip, and those patents have never been set aside. An old case is still pending in the Circuit Court of Anne Arundel County, relating to one of the Islands.

I think it would be advisable and strengthen the City's position if it would obtain all the rights and titles of the South Baltimore Harbor and Improvement Company, for the reasons above stated.

Yours very truly,

ALFONSO von WYSZECKI,
Assistant City Solicitor.

AVW.
JHR.

HOWARD W. JACKSON
MAYOR, EX-OFFICIO

JACOB EPSTEIN

HENRY D. HARLAN

WILLIAM KALB

J. BARRY MAHOOL

STUART PURCELL
CHIEF ENGINEER, EX-OFFICIO

ROBERT GARRETT
CHAIRMAN

RALPH C. SHARRETT
SECRETARY

H. G. PERRING
SUPERVISING ENGINEER



PUBLIC IMPROVEMENT COMMISSION

517 HEARST TOWER BUILDING

BALTIMORE AND SOUTH STREETS

June 24, 1925.

Philip B. Perlman, Esq.,
City Solicitor.

Dear Mr. Perlman:

At the meeting of the Public Improvement Commission held on June 1st, 1925, the Commission decided to acquire the riparian rights to the fast land properties lying between the Baltimore & Ohio Railroad bridge and Hanover Street causeway but not the fast land. A copy of the minutes of this meeting was sent to you on June 12th, 1925. We have had the matter up with Messrs. Dobler and Butler, our Real Estate Committee, and they have reported to me their inability to make any progress in the acquisition of this submerged land. Their recommendation is that immediate condemnation proceedings be started and inasmuch as the authority of the Commission was to acquire by purchase or condemnation, I am writing to ask that you start these proceedings at once.

A large part of this property is owned by the South Baltimore Harbor & Improvement Co. who, through Mr. Albert Raynor the President, refused to treat with us on any basis other than the purchase of their fast land and riparian rights. Another large holding is that of the Mewshaw estate. The fast land belonging to them, the riparian rights of which is desired is divided up between nine separate properties. They are represented by Mr. Harry Karr who has so far been unable to get any commitment from his clients. The balance of the property also divided into small lots, represents about eight holders.

It seems to me that one of the first things to be done is to have an accurate survey made of these riparian rights because the records that we have, one from the Appeal Tax Court and the other in the form of a blueprint made by Martinet for the South Baltimore Harbor & Improvement Co.,

Mr. Perlman:

-2-

6-24-25.

vary radically in the quantity of fast land, the Appeal Tax Court records showing a smaller quantity of fast land and hence a larger area of riparian rights and the Martinet Survey vice versa.

Messrs. Dobler and Butler stand ready to give you any assistance in their power, although as was true in the case of the riparian rights on the north side of the river, it is difficult to arrive at any satisfactory basis for valuing this kind of property.

One advantage that we have on this side of the river is that in the settlement that we made with the alleged owners of Mud Island and Bridgeview Island, the latter lying within the area now to be acquired, the rights of any of these claimants were purchased. A stumbling block, however, lies in the claims of the patentees to that section of Reedbird Island lying within the area described but it seems clear to me that the Court of Appeals definitely killed any rights that these claimants may have in their ruling on the case that came before them, this property all lying below high water.

If, upon investigation, you find that the phraseology of our request for condemnation is not accurate or is not in the form you desire it, please let me know and at the same time furnish the form of resolution that you would like to have passed and I shall take steps to have the Commission pass such resolution.

If I can be of any assistance in this connection, please command me.

Yours very truly,



RCS: AB

Secretary.

Copy to Real Estate Committee.
Mr. Wyszecski. ✓

HOWARD W. JACKSON
MAYOR, EX-OFFICIO

JACOB EPSTEIN

HENRY D. HARLAN

WILLIAM KALB

J. BARRY MAHOOL

STEUART PURCELL

CHIEF ENGINEER, EX-OFFICIO

ROBERT GARRETT
CHAIRMAN

RALPH C. SHARRETT
SECRETARY

H. G. PERRING
SUPERVISING ENGINEER



PUBLIC IMPROVEMENT COMMISSION

517 HEARST TOWER BUILDING

BALTIMORE AND SOUTH STREETS

June 12th, 1925.

Allotment-Acquisition by purchase
or condemnation of rights along south
shore of Patapsco River, etc.

Philip B. Perlman,
City Solicitor,

Dear Sir:

The following excerpt from the Minutes of the Meeting held June 1st, 1925, by the Public Improvement Commission, will advise you of the action taken with regard to matters set forth therein. Where required, you are requested to take the necessary steps to effect the wishes of the Commission insofar as your office is concerned:-

"Appraised values on properties fronting on First Street (Annapolis Road) Brooklyn together with appraisals of the riparian rights appertaining to the above properties were presented; the former appearing in letter from the Real Estate Committee dated April 29th, 1925, covering lots Nos. 1, and 3 to 19 inclusive, total \$91,650.00, and the figures on the riparian rights, totaling \$33,770.00, covering approximately 55 acres, being figured on a basis of \$614.00 which was the average paid for riparian rights on the north shore inside the Hanover Street Bridge. After some little discussion,

Upon

MOTION of Mr. Epstein, seconded by Mr. Mahool, an allotment of not exceeding \$35,000.00 was approved for acquisition, by purchase or condemnation, of the riparian rights along the south shore of the Patapsco River between the Hanover Street and B. & O. R.R. Bridges; the matter of possible acquisition of the feet land fronting on First Street, Brooklyn, and running to the river, to be left for later determination."

Yours very truly,

Ralph C. Sharrett
Secretary.

S. Copy to
Mr. McKinney,
Port Dev. Comm.
Mr. Wyszecski,
" Butler.

CITY SOLICITOR'S OFFICE

Taken from file 27127

April 7th, 1925.

Mr. Ralph C. Sharretts, Secretary,
Public Improvement Commission,
#517 Hearst Tower Building,
Local.

Dear Mr. Sharretts:-

You requested of me some information
regarding the ownership of the riparian rights in the Patapsco
River on the Arundel County side.

COPY
I find that the riparian rights are
in the present owners of the lots binding on the west side of
First Street, Brooklyn, as follows:-

The South Baltimore Harbor and Improvement Company, binds about
403 feet on the Patapsco River.

Gustave Gunther 25 feet.

Again the third lot is owned by the South Baltimore Harbor and
Improvement Company, binding 68 feet.

Lena Adams 40 feet.

James B. Woodward 18 feet.

Mary Ellen Kindle 18 feet.

Evelyn H. Seevers 30 feet.

Alma Larsen 20 feet.

Rita Francis Hammond and Eleanor Phillips, Trustees, 319 feet.

CITY SOLICITOR'S OFFICE

Page two.

Mr. Sharretts.

The islands lying in front of the above lots are known as Bridge View Island and Reed Bird Island. Bridge View Island was patented August 28th, 1907, and the title to the same is now vested in C. C. Tracey; Reed Bird Island was patented September 10th, 1909 and the title is now vested in Harry M. Wagner. On March 28th, 1916, the Mayor and City Council of Baltimore brought suit in the Circuit Court of Arundel County against the said Harry M. Wagner for the purpose of having the patent of Reed Bird Island declared null and void, and as the case never was pushed it is still open on the docket.

I understand, however, that possession had been taken by the patentees of the islands sometime previous to the patent, and while the patents are null and void, by the last decision of the Court of Appeals, the title to the present owners might become a good one by the right of prescription and laches.

Therefore, I would advise that there be little delay before deciding what the City shall do in the matter.

I enclose herewith copies of letters regarding the Hodges matter.

Yours very truly,

AVW.
JHR.

Assistant City Solicitor.

CITY SOLICITOR'S OFFICE

Taken from file ~ 7127

January 15, 1925.

Mr. Ralph C. Sharretts, Secty.,
Public Improvement Commission,
Hearst Tower Building,
Baltimore, Maryland.

Dear Mr. Sharretts:

I beg to reply to your letter of December 23, 1924, in which you advise me that you have been requested by Mr. Garrett to obtain from me a report as to the action of the Court of Appeals in the Klein case, and also the status of the Commission with respect to all of the properties on the north side of the Patapsco River that have been the subject of condemnation proceedings.

(7) The jury in the Klein case made an award of \$64,120 for the 5.7 acres of fast land, together with the riparian rights, lying northwest of the Hanover Street Bridge and adjoining Broening Park. Marchant and Mylander, Trustees, appealed the case to the Court of Appeals, where the award was affirmed so that the amount fixed by the jury is the price the City will be required to pay if it takes over the land.

The following are all the awards for the different properties on the Patapsco River, on the Baltimore County side, to wit:

To- Roland R. Marchant and Walter C. Mylander, Trustees, for 5.7 acres of fast land, together with the riparian rights, lying northwest of the Hanover Street Bridge, adjoining Broening Park - \$64,120.00

CITY SOLICITOR'S OFFICE

-2-

Mr. Ralph C. Sharretts, Secty.

Brought forward - \$64,120.00

To - Roland R. Marchant and Walter C. Mylander, Trustees, for the riparian rights of 14.86 acres, lying southwest of the Hanover Street Bridge - 21,000.00

To - Mason Amusement Company, for the riparian rights of 6.627 acres, lying south of Mylander's land - 4,050.00

To - John W. Hodges, for the riparian rights of 7.967 acres, adjoining Mason Amusement Company's land on the south - 4,000.00

To - John Sanford, for the riparian rights of 9.495 acres, adjoining Hodges land on the south - 6,300.00

To - Anton Narensky and wife, for the riparian rights of 11.152 acres, lying south of Sanford's land. 3,600.00

To - Ambrose Laukaitis and wife, for the riparian rights of 51.71 acres, lying between the land of Narensky and the Baltimore and Ohio Railroad Bridge - 16,800.00

To - James J. Jung and wife, (by agreement) for all their riparian rights in Mud Island and Bridgeview Island, including all the riparian rights of the Patapsco River between the Hanover Street Bridge and the Baltimore and Ohio Railroad Bridge, leading to Curtis Bay 7,000.00

Total - - - - - \$126,870.00

7 This includes all the riparian rights on the Baltimore County side between the Hanover Street Bridge and the Baltimore and Ohio Railroad Bridge, and also the fast land and riparian rights from Broening Park east, to the lot now owned by the Mayor and City Council of Baltimore, on the Hanover Street Bridge, leaving now a small tip of land at the extreme end of the Baltimore County side of the Hanover Street Bridge still to be acquired. The said tip of land is now vested in George E. Saulsbury, John N. Mackall, Howard Bryant and W. W. Varney.

CITY SOLICITOR'S OFFICE

-3-

Mr. Ralph C. Sharretts, Secty.

While the title of the present owners of this strip as patentees was originally bad, yet, by agreements which had been entered into between the patentees and caveators to the said patent, the City probably would be now estopped to deny the title, as the City accepted as part of the said agreement, a deed for some of the land in dispute and covered by the patent and the agreement.

The City so far has not acquired any riparian rights on the Anne Arundel County side of the Patapsco River.

You will note that the amount to James J. Jung and wife was arrived at by agreement, and I beg to enclose herewith for your files a copy of that agreement.

COPIY
In accordance with the request contained in your letter, I am also enclosing a plat showing the properties condemned or acquired by agreement and the amounts involved. I will appreciate it if you will return this plat after it has served your purpose.

All of the amounts given above are the totals, in some instances arrived at after the Court had increased the findings of the jury.

You will recall that under date of October 3, 1924, your Commission advised this Department that it desires the City Solicitor

"to proceed with the condemnation of the riparian rights belonging to the properties along the Brooklyn shore of the Patapsco River, between the Hanover Street Bridge or causeway and the Baltimore & Ohio Railroad Bridge."

This action of the Public Improvement Commission seems to be in accord with, and based upon a letter of September 27, 1924, from the Chairman of the Port Development Commission addressed to the Public Improvement Commission.

CITY SOLICITOR'S OFFICE

-4-

Mr. Ralph C. Sharretts.

The institution of condemnation proceedings for the acquisition of said rights has been awaiting the decision of the Court of Appeals in the case of the City, et al, vs. Mylander and Marchant, Trustees. You will recall that condemnation proceedings were first instituted in the last mentioned case in the name of the City alone without any ordinance of the City having been passed directing such proceedings, but later, after further consideration, this office filed an Amended Petition in said condemnation proceedings on behalf of the City, the Public Improvement Commission and the Port Development Commission. The right of the petitioners to condemn in that case was challenged by the defendants by a motion to quash. In sustaining the condemnation proceedings, the Court of Appeals said:

COPIES
"The contention is that no ordinance was passed for the acquisition of the land by the direct exercise of the City's general Charter power of eminent domain, and that neither of the Commissions uniting in the petition to condemn was empowered to take such action.
* * *

"It is not essential to decide whether the petitioners would have had an equal right to maintain the proceedings separately, under the condition shown by the Record. There can be no doubt that they collectively represent all of the ample power conferred by the General Assembly for the acquisition of property to improve and enlarge the port facilities, upon which the prosperity of Baltimore is vitally dependent."

It will be noticed that the opinion of the Court of Appeals still leaves undecided the question whether said Commissions, acting separately or jointly, can maintain condemnation proceedings.

It will also be noticed that the Court remarked:

"The City of Baltimore has the power under its Charter to

CITY SOLICITOR'S OFFICE

-5-

Mr. Ralph C. Sharretts.

- * acquire by purchase or condemnation any land which it may need for 'any public or municipal purpose' (Charter 1915, Section 6, Sub-section 4). One of its most important purposes is the care and improvement of its harbor, including the erection and maintenance of wharves and piers. (Charter, Section 6, Sub-section 8)."

In view of the last quotation, I suggest the advisability of having an ordinance passed declaring that the acquisition of the riparian rights belonging to all the properties along the southern or Brooklyn shore of the Patapsco River, between the Hanover Street Bridge or causeway and the Baltimore & Ohio Railroad Bridge, all within the territorial limits of the City of Baltimore, is necessary for developing, improving and extending the harbor of Baltimore; and further, directing the City Solicitor on behalf of the Mayor and City Council of Baltimore to acquire said rights either by purchase or condemnation, and that if condemnation proceedings are necessary, to institute and prosecute the same in the name of the Mayor and City Council of Baltimore.

If the Commission desires to continue the efforts to obtain the fast land and riparian rights involved in its port development projects, it will:

1. Advise this Department whether it is now ready to pay the awards stated above; and
2. Advise this Department whether it desires negotiations to be begun, or condemnation proceedings instituted for the tip of land owned by Salisbury, et al; and
3. Advise this Department whether it desires negotiations to be begun, or condemnation proceedings instituted for the acquisition of the riparian rights belonging to the

CITY SOLICITOR'S OFFICE

-6-

Mr. Ralph C. Sharretts.

properties along the Brooklyn shore of the Patapsco River, between the Hanover Street Bridge and the Baltimore & Ohio Railroad Bridge.

If the Commission desires to acquire the riparian rights mentioned in the third paragraph above, I suggest that consideration be given to the question as to whether the City's interests will not be better served by acquiring complete title to the land to which these riparian rights attach. Mr. Wyszecski of this Department will be glad to go into the matter in detail with your Commission at any time.

For the information of the Commission, I beg to advise you that the owners of the properties bordering the Brooklyn shore of the Patapsco River are as follows:

<u>Lot</u>	<u>Owner</u>	<u>Frontage on First St.</u>	<u>Approx. Length of Shore Line.</u>
Lot A	South Baltimore Harbor and Improvement Co.	400 feet.	403 feet
Lot B	W. G. Gunther and wife	25 "	25 "
Lot C	South Baltimore Harbor and Improvement Co.	59 "	68 "
Lot D	Lena Adams	20 "	20 "
Lot E	Lena Adams	20 "	20 "
Lot F	James B. Woodward and wife	18 "	18 "
Lot G	Mary Ellen Kindle	18 "	18 "
Lot H	Evelyn H. Seevers, et al	16 "	16 "
Lot I	Evelyn H. Seevers, et al	14 "	14 "
Lot J	Alma Larsen, et al	20 "	20 "
Lot K	Rita F. Hammond, Trustee	130 "	138 "
Lot L	Rita F. Hammond, Trustee	2 "	and along Railroad Bridge for 349 ft. to River-Length of Shore Line 181.6 ft.
Lot M	State of Maryland, or Mayor and City Council of Baltimore	19.5 "	and also 40 feet along Hanover St. Bridge-Length of Shore Line 45 feet.

CITY SOLICITOR'S OFFICE

-7-

Mr. Ralph C. Sharretts.

<u>Lot</u>	<u>Owner</u>	<u>Frontage on First St.</u>	<u>Approximate Length of Shore Line.</u>
Lot N	State of Maryland, or Mayor and City Council of Baltimore,	70 ft., along Hanover St.	Bridge-Length of Shore Line 43 feet.

Title to Lot M is in the State of Maryland by virtue of two deeds, the first thereof from The South Baltimore Harbor and Improvement Company, dated April 28, 1915, and recorded among the Land Records of Anne Arundel County in Liber G.W. No. 118, Folio 24, etc., which conveyed the reversion to the State for the sum of \$666.66; and the second thereof from August Wænnhold and William Nagell, dated April 29, 1915, and recorded among the Land Records aforesaid in Liber W.M. No. 118, Folio 26, etc., which conveyed the leasehold for the sum of \$4,166.66.

The description in these deeds calls for a beginning point on the west side of First Street at the north side of Chesapeake Street, and at the North end of Lot A, and running thence North-easterly on the west side of First Street 43 feet; thence 100 feet North-westerly at right angles to First Street, etc.

This description does not call for any shore line.

Lot N is an accretion that has arisen against the Hanover Street Bridge, and is not covered by the Land Records.

The total number of lots is fourteen.

I trust that the information contained herein gives you a complete answer to your letter of December 23rd.

Very truly yours,

(Sgd.) PHILIP B. PERLMAN,
City Solicitor.

P/H
Encl.

CITY SOLICITOR'S OFFICE

Taken from file 27129

December 23, 1924.

Allen A. Davis, Esq.,
Assistant City Solicitor.

Dear Mr. Davis:-

The following lots lie between the Hanover Street Bridge, and The Baltimore and Ohio Bridge, on First Street, Brooklyn:-

<u>Lot</u>	<u>Owner</u>	<u>Frontage on First St.</u>	<u>Approximate Length of Shore Line.</u>
Lot A.	South Baltimore Harbor and Improvement Co.,	400 feet.	403 feet.
Lot B.	W.G. Gunther, and wife	25 "	25 "
Lot C.	South Baltimore Harbor and Improvement Co.,	59 "	58 "
Lot D.	Lena Adams	20 "	20 "
Lot E.	Lena Adams	20 "	20 "
Lot F.	James B. Woodward, and wife	18 "	18 "
Lot G.	Mary Ellen Kindle	18 "	18 "
Lot H.	Evelyn H. Seevers, et al.,	16 "	16 "
Lot I.	Evelyn H. Seevers, et al.,	14 "	14 "
Lot J.	Alma Larsen, et al.,	20 "	20 "
Lot K.	Rita F. Hammond, Trustee,	130 "	138 "
Lot L.	Rita F. Hammond, Trustee,	2 "	and along Railroad Bridge for 349 feet to River - Length of Shore Line 181.6 ft.
Lot M.	State of Maryland, or Mayor and City Council of Baltimore,	19.5 ft., and also 40 feet along Hanover Street Bridge - Length of Shore Line 45 feet.	
Lot N.	State of Maryland, or Mayor and City Council of Baltimore,	70 ft., along Hanover Street Bridge - Length of Shore Line 43 feet.	

Title to Lot M, is in the State of Maryland by virtue of two deeds, the first thereof from The South Baltimore Harbor and Improvement Company, dated April 28th, 1915, and recorded among the Land Records of Anne Arundel County in Liber G.W. No. 118, folio 24, etc., which conveyed the reversion to the State for the sum of \$666.66; and the second thereof from August

CITY SOLICITOR'S OFFICE

Allen A. Davis, Esq. - #2.

Wienhold and William Nagell, dated April 29th, 1915, and recorded among the Land Records aforesaid, in Liber W.M. No. 118, folio 26, etc., which conveyed the leasehold for the sum of \$4,166.66.

The descriptions in these deeds call for a beginning point on the west side of First Street at the north side of Chesapeake Street, and at the North end of Lot A, and running thence North-easterly on the west side of First Street 43 feet; thence 100 feet northwesterly at right angles to First Street, etc.,

This description does not call for any shore line.

Lot N is an accretion that has arisen against the Hanover Street Bridge, and is not covered by the Land Records.

The total number of lots, is fourteen.

Very truly yours,

Assistant City Solicitor.

K/N

ROLAND R. MARANT,
CITY SOLICITOR.
ALLEN A. DAVIS,
DEPUTY CITY SOLICITOR
FRANK DRISCOLL,
A. WALTER KRAUS,
HORTON S. SMITH,
ALLAN CLEVELAND,
ASSISTANT CITY SOLICITORS.

Department of Law

Henry W. Weeks, Clerk
Court House
Baltimore, Md.

GEORGE ECKHARDT, JR.
SIMON E. SOBLOFF,
ALFONSO VON WYSZECKI
WIRT A. DUVALL, JR.,
ALBERT K. WEYER,
ASSISTANT CITY SOLICITORS
WM. B. HENKEL,
GENERAL INVESTIGATOR

IN REPLY REFER TO FILE NO. 27127

February 14th, 1923.

Mr. Horton S. Smith,
Assistant Solicitor.

Dear Sir:-

You were present at the meeting of the Public Improvement Commission on February 12th, 1923, and remember that that Commission stated it desired that the riparian rights on the Patapsco River from the Hanover Street Bridge to the south boundary line of the City should be acquired by purchase or condemnation; also the riparian rights affecting Reed Bird Island northeast of the Hanover Street Bridge or causeway, and the property lying to the southeast of Broening Park between the Patapsco River and the Hanover Street Bridge or causeway.

Will you kindly take the necessary steps to carry out the wishes of the Commission in this regard, and as the Commission meets at four o'clock every Monday and may be asking me in regard to what is being done in the matter, I will thank you to each Monday, before noon, lay on my desk a little memorandum of the status of the various proceedings so that if there is any change in the situation, I may be able to report it when inquired of by the member of the Commission.

Very truly yours,

ALLEN A. DAVIS
Deputy City Solicitor

AAD/EH

*Reed Bird Island
Causeway*

(Handwritten circle with a cross inside)

*I have
you?
I'll say you
have.*

CITY SOLICITOR'S OFFICE

Taken from file 271271

January 9th, 1923.

Mr. Frank Gosnell,
Maryland Trust Building,
Baltimore, Maryland.

In re:- Condemnation of
Mud Island.

Dear Mr. Gosnell:-

Mr. Marchant has turned over to me your letter to him of January 5th, 1923, and in reply may I say again what I have already told the young man from your office who called upon me.

We at this time have no such plat as the one of which you ask a copy. One is being prepared and as soon as we receive copies, one will be forwarded to you. Six plats as to individual lots on the northwest side of the Patapsco River have been filed. These plats do not include any part of Reed Bird Island but do include Mud Island. Your clients were made parties in order to secure for the City whatever rights your clients have or claim in Mud Island. The City, however, does not admit that the Wagners have any title in Reed Bird Island. At a subsequent time when we file the petitions on the southeast side of the

CITY SOLICITOR'S OFFICE

river to take Reed Bird Island you will be made parties to secure for the City whatever interest you may have in Reed Bird Island.

None of the six plats filed so far as I know include any part of Reed Bird Island.

If you are willing in each case to file a waiver as to any interest in Mud Island we are willing to dismiss you from the cases so far filed which have reference only to the riparian rights and the land under water from the northwest side of the Patapsco River to the center thereof.

Very respectfully yours,

Assistant City Solicitor.

HSS/AA.

ROLAND R. MARCHANT,
CITY SOLICITOR.
ALLEN A. DAVIS,
DEPUTY CITY SOLICITOR
FRANK DRISCOLL,
A. WALTER KRAUS,
HORTON S. SMITH,
ASSISTANT CITY SOLICITORS.

Department of Law

Henry M. Weeks, Clerk
Court House
Baltimore, Md.

EDWARD F. JOHNSON,
GEORGE ECKHARDT, JR.,
SIMON E. SOBELOFF,
ALFONSO VON WYSZECKI
ASSISTANT CITY SOLICITORS
WM. B. HENKEL,
GENERAL INVESTIGATOR

IN REPLY REFER TO FILE NO. _____

June 24th, 1921.

Mud Island

27127

Mr. Roland R. Marchant,
City Solicitor.

Dear Sir:-

Since giving you my opinion regarding the ownership of the islands in the Patapsco River, the Court of Appeals passed upon those points in the case of Ridgely F. Melvin vs. Jacob Schlesinger.

The Court decided that the riparian owners were at the time of the issuance of the patent and now, entitled to the accretion for which the patent was issued and that the patent should not under the Act (1862, Ch. 129) have been granted.

(Copy of Judge Pattison's opinion attached hereto - ~~our~~ copy of my brief).

The land on the Baltimore County side was patented in February, 1825 to William Krebs and Michael Warner.

The patent described the land as binding on the margin of the waters of the Middle Branch of the Patapsco River and the main southwest branch of the Patapsco River.

On the death of Michael Warner he devised his estate equally among his four children. In May, 1851 the property was divided by a deed of partition between the tenants in common (that is, the heirs of Krebs and the devisees of Warner) and for the purpose of division the stones or markers were planted or called for at the division corners and the descriptions of the various lots called to the stones at the margin of the river.

The partition can not take away any rights of the owners but divides the riparian rights according to the respective river fronts.

In the subsequent deeds the descriptions referred to the lots as being the lots numbered in the deed of partition and with it went the riparian rights.

Very truly yours,


Assistant City Solicitor.

F.D.
R.R.S.

27127

Court of Appeals of Maryland.

No. 47 January Term 1921.

Ridgely P. Melvin, H. Emory Gray, William N. Crisp,

vs

Jacob Schlessinger.

Judge Pattison delivered the Opinion of the Court.

Filed April 8, 1921.

5.139
2.125
2.231
9.495

Mrs. Blane

On the 16th day of December in the year 1916, Wm. H. Crisp, H. M. Gray and Ridgley P. Melvin obtained a patent for a tract of land therein called "Billikin" containing eight and seventy-two hundredths acres bordering upon the Patapsco River, a navigable stream, in Anne Arundel County, Maryland.

On the 14th day of September, 1920, the said patentees, the appellants in this Court, entered into an agreement with the appellee, Jacob Schlessinger, to sell to him the said tract of land at and for the sum of \$4500.00. Of which sum, two hundred dollars were paid prior to the execution of said agreement and the balance was to be paid in 30 days from that time, when possession of said land was to be given to the purchaser, and a deed thereto was to be executed by them conveying to him a good and marketable title to said property.

The bill filed in this case by the appellants asking for specific performance of the aforesaid contract of sale alleged, that they had offered to put appellee in possession of said property and to execute and deliver to him a deed therefor, conveying to him a marketable title thereto upon the payment to them of the balance of the purchase money, and ^{that} he had refused to pay the same alleging in his answer, filed to said bill, that the patentees were not in possession of said property and could not convey to him a marketable title to said land, consisting of marsh that had formed in said river, because of the riparian rights of the owners of the fast land abutting thereon.

The land in question is at or near the town of Brooklyn,

and immediately south of the Baltimore and Ohio Railroad bridge upon the Curtis Bay Branch of its road.

It appears from the evidence that the accretion commenced to form at or near the edge of the channel of the river and extended toward the shore, and at this time, except for a short distance south of the Railroad Bridge, the formation has reached the shore, and there, at the southernmost end of the patented land, it is separated from the upland only by a narrow and shallow stream or run, which at this time is not more than fifty feet in width. As stated by some of the witnesses, said stream or run in its upper course is so shallow that at low tide there is no water at all in it, and at such times a person can walk across it from the fast land to the land conveyed by the patent.

The evidence is in conflict as to whether the land described in the patent was at the time of its issuance at high tide covered by water.

The learned Judge in the Court below, however, stated in his decree that upon the evidence before him he was of the opinion that the land in question was formed as "an island in the stream of the Patapsco river, a navigable water * * * and gradually extended toward the shore, and that at the time the patent was issued it was not at high tide covered by water", but held that because of the rights conferred upon the abutting land owners by the provisions of the Act of 1862, Chapter 129, or Sections 47, 48 and 49 of Article 54 of the Public General Laws of this State, the patentees could not convey unto the purchaser, the appellee, a marketable title thereto, and so dismissed the bill.

The first of these sections (section 47) gives to the proprietor of lands bounding upon any navigable stream "All accretions to said land by the recession of said water, whether heretofore formed or made by natural causes or otherwise, in like manner and to like extent as such right may or can be claimed by the proprietor of land bounding on water not navigable".

The second of these sections (section 48) gives to the proprietor of land such as those mentioned in the first section "the exclusive right of making improvements into the waters in front of his land; such improvements and other accretions * * * shall pass to the successive owners of the land to which they are attached as incident to their respective estates." Provided such improvements shall not interfere with the navigation of the stream of water into which they are made; and

The third section, (Section 49) provides that "No patent hereafter issued out of the land office shall impair or affect the rights of riparian proprietors, as explained and declared in the two preceding sections; and no patent shall hereafter issue for land covered by navigable waters".

In *Goodsell vs Lawson* 42 Md. 348, in speaking of the rights of the proprietor of lands bounding upon a navigable stream, this Court there said:

"What are their rights as riparian proprietors? The Act of 1861-2, ch. 129, has materially changed and enlarged the rights of the proprietors of lands bounding on navigable water, and to the proper understanding of that Act, it is necessary, first to ascertain what those rights were previously, both as to land adjoining waters navigable and unnavigable. The grant of a tract of land bounding on the sea or any navigable water

conveyed no right to the grantee to the land below high-water mark. From that point it belonged to the Sovereign, and while it might be granted to a citizen by express words, subject to the ius publicum of navigation and fishing, it did not pass as an incident to the ownership of the adjacent land. Any increase of the soil, however, formed by the waters gradually or imperceptibly receding, or any gain by alluvion in the same manner as a compensation for what it might lose in other respects, would belong to the proprietor of the adjacent or contiguous lands. *Giraud v Hughes*, 1 G & J. 249. In this last respect there was no difference between waters navigable and not navigable. As to the former, the riparian owner had no right whatever at common law to make improvements into the water in front of his land. Laws have, however, been passed from an early period of our history, conferring such rights to a limited extent, and their construction by our courts will throw much light on the subject now under consideration.

'In the case of non-navigable streams, the riparian owner was, and is still, entitled to the bed of the stream ad filum medium aquae. Thus not only accretions, but all formations rising above the water on his side of the middle line, whether natural or artificial, connected with the shore or otherwise, belong to him. The withdrawal of the water neither increases nor diminishes the validity of his title nor changes it in any respect. It merely changes the character of that which was his before, and enables him to subject it to uses of which it was previously incapable. *Browne v Kennedy*, 5 H & J 205. In this condition of the law the Act of 1861-2, ch. 129, codified as Art. 54, secs. 37-39, was passed.' * * *

Thus, while formerly the owner of land adjacent to navigable water had only the right to the accretion, according to the technical meaning of that word, namely: any increase of the soil formed by the waters gradually or imperceptibly receding, or by alluvion in the same manner; now by sec. 37 of the codified Act of 1862, he is upon the same footing in that respect as the owner of the land bounding on water not navigable. We are not prepared to go to the extent claimed by the counsel for the complainants in the construction of this section. We do not think it gives the riparian proprietor a title to the bed of the adjacent stream ad medium filum aquae. That would involve consequences which were never contemplated by the framers of the law, and is by no means warranted by the language they have used. The accretions alone are intended to be affected, not the bed of the stream before such accretions are formed. As to them, his rights are certainly enlarged, but to what extent it is not now important to inquire."

In *Godsell vs Lawson* the chief question involved was the rights of the riparian owner to improvements made into navigable waters in front of his lands. In the later case of *Linthicum vs Coan*, 64 Md. 439, the question was one of accretion to his lands likewise bordering on navigable waters, and in that case the Court said:

"The evidence for the plaintiff in the Court below tended to prove, that at the date of the patent for Linthicum's Comet, the river at ordinary high tide overflowed all the land in question, and that the portion of it east of Sweetzer's Bridge began to be formed some years after 1860, and the formation of land commenced from the edge of the main channel of the river, and increased in a northerly direction inland towards the Baltimore County shore of the river, and did not make outwards from the fast land on the shore. The evidence on the part of the defendant contradicted this testimony, and tended to prove that the river had been gradually filling up from the bank on the Baltimore County side towards the channel since 1846 or 1848, and that the flats and marsh on the bank of the river in 1854 were nearly in the same condition as they are now, except that at that time they were not so solid as they are now. There was also evidence on the part of the plaintiff that there was a great freshet in the river in or about 1868, which filled up the bed of the river very much, and deflected the main channel fifteen or twenty feet from its original course towards the Anne Arundel shore east of the bridge, and made a deposit of from fifteen inches to two feet of mud on the premises described in the declaration.

It is thus seen that we are to determine the respective rights of the riparian proprietor, and the owner of the bed of the river. * * * *

It has been made a question in this case whether the patent for Linthicum's Comet did not take away from the riparian owners the right to such accretions as we have been considering. As it was issued before the passage of the Act of 1861-2, chapter 129, it is of course not affected by this statute. If the land covered by the patent had remained the property of the State, the riparian owners would have been entitled to the accretions under the circumstances above mentioned. It was a valuable right given to them by the law."

The Act of 1862 was of course passed before the issuance of the patent in this case, and unlike the case from which we have just quoted, the Act applies.

As we have already said, the accretion in this case started at the edge of the channel of the river and extended toward the shore as in Linthicum vs Coan, where it was said that "if the land covered by the patent had remained the property of the State, the riparian owners would have been entitled to the accretions under the circumstances" there shown. Therefore as the Act applies in this case and as the facts are similar to the facts of that case, it would seem to follow, from what is there said, that the riparian owners in this case were at the time of the issuance of the patent, and now, entitled to the accretions for which the patent in this case was issued. If so, the patent should not have been granted.

The Act was passed with the intention and for the purpose of enlarging the rights of riparian owners upon navigable waters of this State by giving to them accretions to their lands, to which they would not be entitled; without the statute, and also by giving to them the exclusive right to make improvements in the waters in front of their lands; and while it has been said that it was not intended by the Act to give to such riparian owners the title to the bed of the stream, (Goodsell vs Lawson); yet by the language of the Act, we do not think the accretions contemplated by it, to which the riparian owners are thereby entitled, are confined to those only that, in their formation, start at the shore and extend outwards to the channel.

As already stated, the riparian owners had the right to such accretions before the passage of the Act when they were imperceptibly formed, and now to say that their rights, enlarged by the statute, go only to the extent of adding thereto accretions which have been more rapidly and suddenly formed, from natural causes or otherwise, extending outwards from the shore, would be giving the statute a very narrow construction and one that, we think, should not be adopted.

The Act prohibits the granting of patents that will impair or affect such rights of the riparian owners; and whether those rights have been impaired or affected by the issuance of a patent is largely to be determined upon the facts and circumstances of each particular case.

In our opinion the patents should not under the Act have been granted, as it is established by the facts in the case that the rights of the riparian owners were impaired and affected by the grants thereunder of the accretions to which said riparian owners were then, and now, entitled; and by the grant of which the riparian owners were not only excluded from the use of the navigable stream, but as the accretions so granted lie between the shore and the channel of the stream, the said riparian owners were prevented thereby from making improvements in the waters in front of their lands. Therefore as the appellants themselves have not a marketable title in the land sold, they can not grant such title to the appellee, consequently the decree of the Court below dismissing the bill will be affirmed.
Decree affirmed with costs.

True Copy:

Test:

E. C. Magmdu

Clerk of the Court of Appeals of Maryland.

CITY SOLICITOR'S OFFICE

no. 14
February 17th, 1921.

Mr. Ralph C. Sharretts, Secretary,
Public Improvement Commission,
Garrett Building,
City.

My dear Mr. Sharretts,-

Upon my return to the office this morning I find your letter of the 8th instant, transmitting letter of February 1st, quoting a resolution of the Port Development Commission, urging the purchase or condemnation of the flats in the Patapsco River, commonly called Mudd Island flats.

COPY
When this matter was referred to me, about December 1st, 1920, I immediately presented the situation to Major Shirley and requested that he prepare the necessary plats for streets along the southeast and northwest shores of the Patapsco. The plan which I outlined to the Commission required these plats as a preliminary measure. I had the matter up with Major Shirley just before I left town and I confidently expected that the data would be completed before this. I learn, however, that it has not and I have today made an engagement with Major Shirley to meet him tomorrow morning in order that the completion of this work may be expedited. I certainly hope to have the necessary ordinances and advertisements prepared by Monday.

Very truly yours,

City Solicitor.

11
WILLIAM F. BROENING
MAYOR, EX OFFICIO

JACOB EPSTEIN

HENRY D. HARLAN

WILLIAM KALB

J. BARRY MAHOOL

HENRY G. PERRING

CHIEF ENGINEER, EX OFFICIO

ROBERT GARRETT

CHAIRMAN

RALPH C. SHARRETT

SECRETARY



PUBLIC IMPROVEMENT COMMISSION

~~CITY HALL~~

February 8, 1921.

27127

Roland R. Marchant, Esq.,
City Solicitor,
Baltimore, Md.

Dear Sir:

The following excerpt from the minutes of the meeting, held February 3, 1921, of the Public Improvement Commission will advise you of the action taken with regard to the matters set forth therein. It is sent for your information.

"A letter dated February 1st from Secretary Clayton of the Port Development Commission was read by the Chairman. It contained the recommendation that condemnation proceedings be commenced for the acquisition of the land lying between the Hanover Street Bridge, the B. & O. R.R Bridge and the two sides of the Patapsco River for dumping purposes; and the further recommendation that negotiations be entered into with the present owners that will permit during such condemnation proceedings the dumping of material upon these islands. Upon

Motion of Judge Harlan, seconded by Mr. Kalb, this letter was referred to the City Solicitor for his consideration."

Enclosed herewith you will find the letter of February 1, 1921, above referred to.

Yours very truly,

*Ordinance -
Gave to Sharley*

Ralph C. Sharrett
Secretary

PORT DEVELOPMENT COMMISSION
CITY HALL, BALTIMORE

JOHN E. GREINER, *Chairman*
JAMES H. PRESTON
AUSTIN McLANAHAN
BENJAMIN F. WOELPER, Jr.
ELMORE B. JEFFERY

ex-officio

WM. F. BROENING, *Mayor*
BANCROFT HILL, *Harbor Engineer*

Baltimore, Md., February 1, 1921.

The Public Improvement Commission,
City Hall,
Baltimore, Md.

Gentlemen:

The following resolution was adopted at the meeting of this Commission on January 31, and I was instructed to forward a copy of it to the Board of Estimates, the City Solicitor and the Public Improvement Commission -

"It is the sense of the Port Development Commission that steps be taken to acquire by purchase or condemnation the islands in the Patapsco River near the Hanover Street Bridge between the former Anne Arundel and Baltimore County shores, and that pending the consummation of these proceedings negotiations be opened with all claimants against this property for the immediate right to use these islands for dumping excavated material from the channel on the islands after a proper temporary bulkhead has been built by the Harbor Engineer, and in this manner acquire for the City the land which may be made by this excavated material instead of having it used by private parties."

Very truly yours,

PORT DEVELOPMENT COMMISSION

James W. Clayton

Secretary pro-tem

CITY SOLICITOR'S OFFICE

November 18th, 1920.

Mr. Robert Garrett, Chairman,
Public Improvement Loan Commission,
c/o Robert Garrett & Sons,
Garrett Building,
City.

My dear Mr. Garrett:-

Pursuant to the talk which we had just before the last meeting of your Board, I submit the following statement with reference to the negotiations between the City and the owners of certain islands on the Patapsco flats.

These islands are three in number known as Reed Bird Island, Mudd Island and Bridge View Island and are situated in the Patapsco River between the mouth of the river as the same flows or enters into the Middle Branch of the Patapsco and the bridge of the Curtis Bay branch of the Baltimore & Ohio Railroad. The islands are shown on an attached blue print prepared by Major Shirley of the Topographical Survey Commission. A brief description of each is as follows:-

REED BIRD ISLAND - lying in Anne Arundel County (now City) was patented September 10th, 1909, to John P. Bruns, and contained thirty-three and three-quarter acres (Patents E. S. T. No. 1, folio 217). The surveyor, in making his return to the Land Office, stated in his certificate that "the above described land is not covered by navigable water. By deed dated December 3, 1910, and recorded among the land records of

CITY SOLICITOR'S OFFICE

R. G. #2.

Anne Arundel County in Liber W. G. No. 83, folio 184, etc., this island was conveyed by said Bruns to Harry M. Wagner, in whose name it now stands. By deed dated May 5th, 1916, (G. W. No. 125, folio 202) the said Harry M. Wagner granted and conveyed to the State of Maryland a right of way, for street purposes, across said island, said deed reserving unto the said Wagner the fee in said island and also the "privilege of unloading materials from said State road upon his said land for grading upon the same." This island was assessed on the Tax Books of Anne Arundel County in 1912 at one hundred and fifty dollars per acre, making a total assessment of five thousand and fifty-six dollars.

BRIDGE VIEW ISLAND - being an island in Anne Arundel County (now City) was patented August 28th, 1907, to William Talbott and Charles H. Lewis and contained ten and ninety-six one-hundredths acres (Patents E. S. T. No. 1, folio 91). A warrant for a resurvey was issued out of the Land Office on August 13, 1912, but no further proceedings were had. By deed dated August 20, 1920, and recorded among the land records of Baltimore City, this island was conveyed by Charles H. Lewis, et al. to C. C. Tracey in whose name it now stands. There is no assessment on the Tax Books against this island.

MIDD ISLAND - lying in Baltimore County (now City) was originally patented December 22, 1905, to Charles H. Lewis and William M. Talbott, and contained twelve and forty-eight one-hundredths acres (Patents W. O. M. No. 1, folio 616). Under a warrant of resurvey, a later patent was issued to the same parties May 17th, 1913, and contained twenty-three and eight-tenths acres (Patents E. S. T. No. 1, folio 557). By deed dated August 20, 1920, and recorded among the land records of Baltimore City, this island was conveyed by Charles H. Lewis, et al. to C. C. Tracey, in whose

CITY SOLICITOR'S OFFICE

R. G. #3.

name it now stands.

The circumstances surrounding the negotiations are as follows,-

Early in the past summer, several of the City officials became much exercised concerning the announcement by the local Government engineer in charge of dredging that the dredging work to be done in Baltimore harbor, as provided for by the appropriation of Congress, would be discontinued, unless the City at an early date provided adequate area for dumping or depositing the dredged material. It was estimated that in dredging the Baltimore harbor 4,400,000 cubic yards of material would be removed, of which 1,180,000 cubic yards would be dredged from the Spring Garden Channel. The only available space for depositing this material was behind the McComas street bulkhead and it was estimated that this space would care for only 400,000 cubic yards. Thus it became necessary to find space for dumping 700,000 cubic yards from the Spring Garden Channel and for 3,000,000 cubic yards from channels in other parts of the Baltimore harbor.

The above facts were presented to the Board of Estimates and the members of the Board, the Mayor and the Chief Engineer took a lively interest in the situation, with the result that the Chief Engineer obtained an option to purchase the three islands described. The option provided that the City should pay \$80,000 for Mudd Island and Bridge View Island and \$125,000 for Reed Bird Island. At the meeting of the Board of Estimates on July 28th, 1920, (not attended by me because of absence from the City) the Board, on motion of President Bryant, decided to exercise the option to purchase the islands at the prices above named, subject to the approval of the titles by this office.

CITY SOLICITOR'S OFFICE

R.G. #4.

It is proper for me to say that I entered upon the examination of these titles with full knowledge that the negotiations were conducted by all parties having in mind the use to which the islands were to be put, that is, that the City contemplated the acquisition of the legal title to the islands as a means to acquire the right to use the whole of the flats between the shore lines as a dumping place for dredged material. To throw light on this question it occurred to me that it was necessary to make a complete investigation of the title to the several riparian lots on either shore of the river. In this connection I submit a title plat showing each lot affected. This plat was prepared solely from information obtained from the records and does not purport to conform to the existing physical conditions as the same would be shown by an actual survey.

Asking you to bear in mind that the title to the islands themselves, as well as the right of the City to fill in between the shore and the islands, depends in a great degree upon the nature of the title of the riparian owners, I will comment first upon the title of the owners.

BALTIMORE COUNTY SIDE.

All of the lots on the Baltimore County side of the Patapsco River, shown on the accompanying plat, were originally part of a tract of land known as "Kreb's and Warner's Terra Firma", which tract, containing six hundred and sixty-eight acres, was patented February 10, 1825, to William Krebs and Michael Warner. The description as contained in the patent, after running along the margin of the water of the middle branch of the Patapsco River, calls for a point which is supposed to divide the middle branch from the south-

CITY SOLICITOR'S OFFICE

R. G. 5

west branch of said river. By referring to the accompanying plat it will be noted that this point is at the northeasternmost corner of the Klein lot. From said point the description runs "up and binding on the margin of the water in said river the twenty-two following courses, etc." These twenty-two courses embrace all of the shore front on the Baltimore County side within the area shown on the accompanying plat. It is obvious from the language used in the patent that the grant extended only to the margin of the river and that the state did not, by granting said patent, part with its title to any portion of the bed of said river.

In the year 1851 a partition was made of a large part of the original tract of Terra Firma by deed of partition recorded in A. W. B. No. 458, folio 1, and for the first time descriptions were set up of the separate lots, which descriptions in many instances, have remained the same to the present time. The descriptions used in said deed of partition made specific calls to stones, stakes and trees, planted in the margin of the river, all of which calls are in each instance shown on the accompanying plat. The allottees under said deed of partition and their successors in title down to the present time, have apparently never assumed to own any portion of the bed of the river as is evidenced in each instance by the specific calls contained in the descriptions of the various lots, to stones, stakes, etc. along the margin of the river. In my opinion, therefore, the riparian owners along the Baltimore County shore have title only to the margin of the river, which would, of course, include accretions.

ANNE ARUNDEL COUNTY SIDE.

The ancient titles on this side of the river, as well

CITY SOLICITOR'S OFFICE

R. C. #6.

as the original patents, are somewhat obscure. The titles chain back to a tract of land originally known as "Duck Cove". There is no record in the Land Office of the issuance of a patent for Duck Cove. A patent was issued however for "Duke's Cove" (Patents 14 folio 244) and from the various references appearing in the titles, it is safe to assume that Duck Cove and Duke's Cove were one and the same tract. My abstract of the patent does not show the date of its issuance but the original warrant was issued in the year 1659 and the patent was probably issued shortly thereafter. The description in the original patent is somewhat obscure, beginning at a bounded white oak upon a point by a great marsh and running down the river and bounding on the river and on the cove called the Duke Cove to a bounded oak standing at the head of said cove, etc. It would be difficult to locate the original outlines of Duck Cove with reference to existing conditions, but the calls in the patent to the river and the courses bounding on the river are, in my opinion, sufficient to establish the fact that the state did not by said patent part with its title to any portion of the bed of said river.

In 1858 a large portion of the tract known as Duck Cove, together with six or seven other tracts, were acquired by the Patapsco Company of Baltimore. This company had a resurvey made of all of its acquisitions, totalling in the neighborhood of three thousand acres. The entire acreage extending back to Curtis Creek was repatented under the name of "Brooklyn", by which name it has been known to the present time. The description in the patent of Brooklyn is extremely lengthy and at one point runs into the water of the Patapsco River to a point one hundred feet from the shore line and runs thence parallel to the shore line keeping at the distance of one hundred feet therefrom. As far as I can ascertain at this time the one

CITY SOLICITOR'S OFFICE

R. G. #7

hundred foot extension into the water is in front of the lots shown on the accompanying plat. It seems to me there can be no doubt that the Patapsco Company under said patent acquired title out into the Patapsco River for a distance of one hundred feet from the shore. To plat definitely the original outlines of "Duck Cove" as well as the outlines of "Brooklyn", would require considerable additional time and would involve the platting of certain adjoining areas in which we are not interested. In my opinion the investigation as made is sufficiently exhaustive for present purposes.

The descriptions of the separate lots on the Anne Arundel County side of the river, in most instances, call either to a stone planted on the shore of the river or call to the south shore of the river itself. The courses then run with the meanders of the shore. The Crisp lot for instance, as shown on the plat, begins at a stone on the south shore of the river at the water's edge while Acton's Park lot begins on the south shore of the river itself. The Seever's lot as shown on the plat calls for a stone planted in the south shore of the Patapsco River and runs thence with the meanders of said shore, etc. This lot has since been divided into many smaller lots, the descriptions in most instances calling to the shore of the river and run thence with the meanders of said shore.

In my opinion the state has never parted with its ownership of the bed of the Patapsco River on the Anne Arundel County side, except to the extent of one hundred feet as hereinbefore stated in the patent for "Brooklyn".

Inasmuch as the Patapsco River is a navigable river within the meaning of the law in this State, that is a place where the tide ebbs and flows, the State had the right to issue patents to the several is-

CITY SOLICITOR'S OFFICE

R. G. #7

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R. G. #8

CITY SOLICITOR'S OFFICE

lands in question, provided these patents were issued in accordance with the provisions of Article 54 of the Code.

COPY

Taken from file 52619

CITY SOLICITOR'S OFFICE

November 18th, 1920.

Mr. Robert Garrett, Chairman,
Public Improvement Loan Commission,
c/o Robert Garrett & Sons,
Garrett Building,
City.

My dear Mr. Garrett:-

Pursuant to the talk which we had just before the last meeting of your Board, I submit the following statement with reference to the negotiations between the City and the owners of certain islands on the Patapsco flats.

These islands are three in number known as Reed Bird Island, Mud Island and Bridge View Island and are situated in the Patapsco River between the mouth of the river as the same flows or enters into the Middle Branch of the Patapsco and the bridge of the Curtis Bay branch of the Baltimore & Ohio Railroad. The islands are shown on an attached blue print prepared by Major Shirley of the Topographical Survey Commission. A brief description of each is as follows:-

REED BIRD ISLAND - lying in Anne Arundel County (now City) was patented September 10th, 1909, to John P. Bruns, and contained thirty-three and three-quarter acres (Patents U. S. T. No. 1, folio 217). The surveyor, in making his return to the Land Office, stated in his certificate that "the above described land is not covered by navigable water." By deed dated December 3, 1910, and recorded among the land records of

CITY SOLICITOR'S OFFICE

R. G. #2.

Anne Arundel County in Liber W. G. No. 83, folio 184, etc., this island was conveyed by said Bruns to Harry M. Wagner, in whose name it now stands. By deed dated May 5th, 1916, (G. W. No. 125, folio 202) the said Harry M. Wagner granted and conveyed to the State of Maryland a right of way, for street purposes, across said island, said deed reserving unto the said Wagner the fee in said island and also the "privilege of unloading materials from said State road upon his said land for grading upon the same." This island was assessed on the Tax Books of Anne Arundel County in 1912 at one hundred and fifty dollars per acre, making a total assessment of five thousand and fifty-six dollars.

BRIDGE VIEW ISLAND - being an island in Anne Arundel County (now City) was patented August 28th, 1907, to William Talbott and Charles H. Lewis and contained ten and ninety-six one-hundredths acres (Patents E. S. T. No. 1, folio 91). A warrant for a resurvey was issued out of the Land Office on August 13, 1912, but no further proceedings were had. By deed dated August 20, 1920, and recorded among the land records of Baltimore City, this island was conveyed by Charles H. Lewis, et al. to C. C. Tracey in whose name it now stands. There is no assessment on the Tax Books against this island.

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CITY SOLICITOR'S OFFICE

R. G. #3.

name it now stands.

The circumstances surrounding the negotiations are as follows,-

Early in the past summer, several of the City officials became much exercised concerning the announcement by the local Government engineer in charge of dredging that the dredging work to be done in Baltimore harbor, as provided for by the appropriation of Congress, would be discontinued, unless the City at an early date provided adequate area for dumping or depositing the dredged material. It was estimated that in dredging the Baltimore harbor 4,400,000 cubic yards of material would be removed, of which 1,100,000 cubic yards would be dredged from the Spring Garden Channel. The only available space for depositing this material was behind the McCombs street bulkhead and it was estimated that this space would care for only 400,000 cubic yards. Thus it became necessary to find space for dumping 700,000 cubic yards from the Spring Garden Channel and for 3,000,000 cubic yards from channels in other parts of the Baltimore harbor.

The above facts were presented to the Board of Estimates and the members of the Board, the Mayor and the Chief Engineer took a lively interest in the situation, with the result that the Chief Engineer obtained an option to purchase the three islands described. The option provided that the City should pay \$80,000 for Mudd Island and Bridge View Island and \$125,000 for Reed Bird Island. At the meeting of the Board of Estimates on July 28th, 1920, (not attended by me because of absence from the City) the Board, on motion of President Bryant, decided to exercise the option to purchase the islands at the prices above named, subject to the approval of the titles by this office.

CITY SOLICITOR'S OFFICE

R. G. #4.

It is proper for me to say that I entered upon the examination of these titles with full knowledge that the negotiations were conducted by all parties having in mind the use to which the islands were to be put, that is, that the City contemplated the acquisition of the legal title to the islands as a means to acquire the right to use the whole of the flats between the shore lines as a dumping place for dredged material. To throw light on this question it occurred to me that it was necessary to make a complete investigation of the title to the several riparian lots on either shore of the river. In this connection I submit a title plat showing each lot affected. This plat was prepared solely from information obtained from the records and does not purport to conform to the existing physical conditions as the same would be shown by an actual survey.

Asking you to bear in mind that the title to the islands themselves, as well as the right of the City to fill in between the shore and the islands, depends in a great degree upon the nature of the title of the riparian owners, I will comment first upon the title of the owners.

BALTIMORE COUNTY SIDE.

All of the lots on the Baltimore County side of the Patapsco River, shown on the accompanying plat, were originally part of a tract of land known as "Kreb's and Warner's Terra Firma", which tract, containing six hundred and sixty-eight acres, was patented February 10th, 1825 to William Krebs and Michael Warner. The description as contained in the patent, after running along the margin of the water of the middle branch of the Patapsco River calls for a point which is supposed to divide the middle branch from the south-

CITY SOLICITOR'S OFFICE

R. 9. 5

west branch of said river. By referring to the accompanying plat it will be noted that this point is at the northeasternmost corner of the Klein lot. From said point the description runs "up and binding on the margin of the water in said river the twenty-two following courses, etc." These twenty-two courses embrace all of the shore front on the Baltimore County side within the area shown on the accompanying plat. It is obvious from the language used in the patent that the grant extended only to the margin of the river and that the state did not, by granting said patent, part with its title to any portion of the bed of said river.

In the year 1851 a partition was made of a large part of the original tract of Terra Firma by deed of partition recorded in A. W. B. No. 458, folio 1, and for the first time descriptions were set up of the separate lots, which descriptions in many instances, have remained the same to the present time. The descriptions used in said deed of partition made specific calls to stones, stakes and trees, planted in the margin of the river, all of which calls are in each instance shown on the accompanying plat. The allottees under said deed of partition and their successors in title down to the present time, have apparently never assumed to own any portion of the bed of the river as is evidenced in each instance by the specific calls contained in the descriptions of the various lots, to stones, stakes, etc. along the margin of the river. In my opinion, therefore, the riparian owners along the Baltimore County shore have title only to the margin of the river, which would, of course, include accretions.

ANNE ARUNDEL COUNTY SIDE.

The ancient titles on this side of the river, as well

CITY SOLICITOR'S OFFICE

R. G. #6.

as the original patents, are somewhat obscure. The titles chain back to a tract of land originally known as "Duck Cove". There is no record in the Land Office of the issuance of a patent for Duck Cove. A patent was issued however for "Duke's Cove" (Patents 14 folio 244) and from the various references appearing in the titles, it is safe to assume that Duck Cove and Duke's Cove were one and the same tract. My abstract of the patent does not show the date of its issuance but the original warrant was issued in the year 1659 and the patent was probably issued shortly thereafter. The description in the original patent is somewhat obscure, beginning at a bounded white oak upon a point by a great marsh and running down the river and bounding on the river and on the cove called the Duke Cove, to a bounded oak standing at the head of said cove, etc. It would be difficult to locate the original outlines of Duck Cove with reference to existing conditions, but the calls in the patent to the river and the courses bounding on the river are, in my opinion, sufficient to establish the fact that the state did not by said patent part with its title to any portion of the bed of said river.

In 1858 a large portion of the tract known as Duck Cove, together with six or seven other tracts, were acquired by the Patapsco Company of Baltimore. This company had a resurvey made of all of its acquisitions, totalling in the neighborhood of three thousand acres. The entire acreage extending back to Curtis Creek was repatented under the name of "Brooklyn", by which name it has been known to the present time. The description in the patent of Brooklyn is extremely lengthy and at one point runs into the water of the Patapsco River to a point one hundred feet from the shore line and runs thence parallel to the shore line keeping at the distance of one hundred feet therefrom. As far as I can ascertain at this time the one

CITY SOLICITOR'S OFFICE

R. G. #7

hundred foot extension into the water is in front of the lots shown on the accompanying plat. It seems to me there can be no doubt that the Patapsco Company under said patent acquired title out into the Patapsco River for a distance of one hundred feet from the shore. To plat definitely the original outlines of "Duck Cove" as well as the outlines of "Brooklyn", would require considerable additional time and would involve the platting of certain adjoining areas in which we are not interested. In my opinion the investigation as made is sufficiently exhaustive for present purposes.

The descriptions of the separate lots on the Anne Arundel County side of the river, in most instances, call either to a stone planted on the shore of the river or call to the south shore of the river itself. The courses then run with the meanders of the shore. The Crisp lot for instance, as shown on the plat, begins at a stone on the south shore of the river at the water's edge while Acton's Park lot begins on the south shore of the river itself. The Seewers lot as shown on the plat calls for a stone planted in the south shore of the Patapsco River and runs thence with the meanders of said shore, etc. This lot has since been divided into many smaller lots, the descriptions in most instances calling to the shore of the river and run thence with the meanders of said shore.

In my opinion the state has never parted with its ownership of the bed of the Patapsco River on the Anne Arundel County side, except to the extent of one hundred feet as hereinbefore stated in the patent for "Brooklyn".

Inasmuch as the Patapsco River is a navigable river within the meaning of the law in this State, that is a place where the tide ebbs and flows, the State had the right to issue patents to the several is-

CITY SOLICITOR'S OFFICE

B. G. #8

lands in question, provided these patents were issued in accordance with the provisions of Article 54 of the Code.

COPY

Philip B. Perlman, Esq.,
City Solicitor,
Court House, Local.

Dear Mr. Perlman:-

In re: Acquisition of Riparian
Rights on the East side of the
Patapsco River.

I beg to report to you in regard
to my negotiation with the South Baltimore Harbor and Improve-
ment Company of Arundel County *in above matter*

This Company is the successor of the
Patapsco Company, which was the original owner of the tract called
Brooklyn. The Patapsco Company ^{on Dec. 4th 1858} obtained a patent of Brooklyn on
a special warrant ^{for} to ~~survey~~ ^{of} a tract containing 2735 acres, more
or less.

In the description of the patent is
the following language *is used*:

"Thence running with and bounding on
the second line of said conveyance, north
138-1/11 perches into the waters of the
Patapsco River, which place or spot is
100 feet from the shore or water edge out
into the Patapsco River; thence running
parallel to the shore lines of the Duck Cove
and keeping at the distance of 100 feet from
the said shore" *etc.*

~~This patent was obtained on December~~

~~4th, 1858.~~

The South Baltimore Harbor and Improvement
Company has sold at various times different lots ^{and} ~~in~~ all their
descriptions ^{called} ~~they went to a stone~~ ^{on the south shore of the Patapsco}
River, and ^{run from} with meanders of the shore of said river. The Company
is still the owner of two lots, one ~~lot~~ 400 feet fronting on First
Street with a depth of about 106 feet to the Patapsco River. This
lot has an acreage of riparian rights of about 13,706 acres; and
the other lot fronting 59 feet on First Street with a depth of 140

feet to the Patapsco River, and ~~riparian rights~~ has an acreage of riparian rights of 1.88 acres.

The City has paid for the riparian rights at the rate of \$600.00 an acre, which would make the riparian rights worth \$9,351.00. The Real Estate Committee ~~did~~ appraised the fast land on First Street at \$28,600.00, making a total of \$37,951.00 for the holdings of the South Baltimore Harbor and Improvement Company.

I have been unable to get a price for just the riparian rights, as the Company wishes to sell all its interests in said land, it being about the only land which the Company has left. The price the Company has set for said land ^{and all its riparian rights} is \$58,000.00, Mr. Albert ^SRayner, President of the Company, intimated that \$50,000.00 would be ^{accepted} recommended.

I have given a great deal of thought to the language in the patent and as this patent was taken out prior to the Act of 1862, the patent ^{will} ~~should~~ hold good even if at that time it included land covered by navigable waters. *[Signature]*

The patents to Reed Bird Island and Bridge View Island have never been set aside. *[Signature]* I also understand that a case is pending as to Reed Bird Island. *[Signature]*

I think it would be advisable and strengthen the City's position if it would obtain all the rights and titles of the South Baltimore Harbor and Improvement Company, for the reasons above stated.

Yours very truly,

ALFONSO von WYSZECKI,
Assistant City Solicitor.

AVW.
JHR.

~~Under the Bridge~~

10

The ~~present~~ title of the S. B. & D. is 100 feet beyond the shore lines being made, the question arises whether the deeds from the Company to the various purchasers of the several lots stopped at the shore lines or whether by construction they would ^{include} ~~extend~~ also to one hundred feet beyond the shore lines.

From examining all the papers in the matter I am of the opinion that the South Bay Company intentionally excluded ~~in~~ ^{the} right in the 100 feet beyond the shoreline from all the deeds they have made out, that S. B. & D. did this so that they might retain control of the shore lines along the entire extent of their holding, this would seem reasonable, because when in a purchase of one lot right down extended a pier or carried on some other operation this would have been objectionable or undesirable & this remaining property, if this view is accepted it would appear that no riparian rights passed to the separate lots and if all the extent of S. B. in the 100 feet strip is acquired they would not be regarded as separate holders of the separate lots for any riparian right.

And further Reed Bend Island & Bridge View Island are lying justly in the 100 feet strip, and these points have never been sold away, as clear as still remains in the Court's records.

relating to Great Islands.

CITY SOLICITOR'S OFFICE

file = 7127

October 1st, 1920.

Honorable Board of Estimates
of Baltimore City.

Gentlemen:-

I have your letter of the 29th ultimo, referring to the correspondence of the Chief Engineer with Mr. J. Spence Howard, bearing upon the purchase of certain property on Patapsco Flats.

I do not feel that I can take any steps in this matter until disposition is made of the title to the several islands which the City is under contract to purchase. This question will be decided during the coming week.

Very truly yours,

City Solicitor.

RRM/SBS

BOARD OF ESTIMATES.

HOWARD BRYANT,
President Second Branch City Council
PRESIDENT

WILLIAM F. BROENING,
Mayor

GEORGE F. WIEGHARDT,
Highways Engineer

ROLAND R. MARCHANT,
City Solicitor

PETER E. TOME,
Comptroller
SECRETARY

C. H. SUMWALT,
Deputy Comptroller,
CLERK



Sept. 29, 1920.

Roland R. Marchant, Esq.,

City Solicitor.

Dear Sir:-

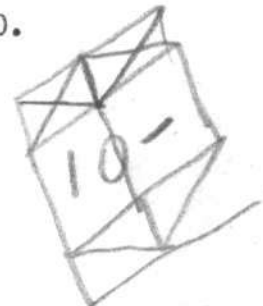
The Board of Estimates at its regular meeting September 28th, referred to you correspondence of the Chief Engineer with regard to the Patapsco Flats.

Yours truly,

WSH/EAC.

W. S. Hanna

Clerk.



ROLAND R. MARCHANT,
CITY SOLICITOR.
ALLEN A. DAVIS,
DEPUTY CITY SOLICITOR.
FRANK DRISCOLL,
A. WALTER KRAUS,
HORTON S. SMITH,
ASSISTANT CITY SOLICITORS.

Department of Law,
Henry M. Weeks, Clerk
Court House
Baltimore, Md.

EDWARD F. HANSON,
GENERAL ASSISTANT
GEORGE ECKHARDT, JR.
SIMON E. SOBELOFF,
SPECIAL ASSISTANTS

IN REPLY REFER TO FILE NO. _____

September 23rd, 1920.

63

In re: Islands in the Patapsco River.

Roland R. Marchant, Esq.,
City Solicitor.

Dear Sir:-

I have received the report of E. Donovan Hans in reference to the islands in the Patapsco River, known as Reed Bird, Bridge View and Mud Islands.

As far as the records show the patents issued by the Land Office are regular and prima facie correct, the only defect being in the patent for Mud Island where the words "not covered by navigable water" ^{do not} appear in the return of the Surveyor. These words, however, do ~~not~~ appear upon the return of the Surveyor in the other patents. This fact would make the patents void under Article 54, Section 49 of the Code.

The patent for Reed Bird Island is contested by the City and there is now pending in the Circuit Court for Anne Arundel County a bill to set the patent aside.

The patent for Bridge View Island is void because it interferes with the riparian rights of the South Baltimore Land Company, whose title extends 100 feet from the shore line and appears to take in part of this island.

The title to these islands can be impeached if the following facts can be sustained:

1. If at the time of the issuance of the patents they were

covered by navigable waters.

2. If they interfere with the riparian rights of the owners of the land on the shore.

Code, Art. 54, Sec. 47, 48, 49.
Bowie vs. W. M. R. R. 133 Md. 10.

3. If the Surveyor of the Counties in which the islands were situate didnot personally make the survey ~~and the same was the land.~~

Code, Art. 54, Sec. 30.

Reed Bird Island is totally defective for the reason that it interferes with the riparian rights of the City which, in conjunction with Anne Arundel County, owned a half acre of ground upon which rested the abutment of the old Long Bridge which, at the time the patents were issued, was the property of the City extending over the alleged island to Light Street. The description begins upon the bridge. Therefore, if fast land existed, the City was in actual possession at the time the patent was issued.

The State Roads Commission, in constructing the fill for the Hanover Street Bridge, took a deed from the assignee of the patent for a right-of-way over Reed Bird Island. This might be construed as a recognition by the State of the validity of the patent but the acceptance of the deed would be of no greater force than the patent itself and, if the patent is void, no action by another agency of the State could make it valid.

While the titles of the owners of the land on what was formerly the Baltimore County Shore do not extend to the channel, still the owners have riparian rights, i.e. to build out into the water and also are entitled to ingress and egress to their lands over the water. This right, however, is subject to the action of the elements, which may add to or take away from their holdings. Thus they would be entitled to all accretions making out from their lands and would, at the same time,

.R.M.#3.

have to suffer from the formation of any islands in the bed of the river, which might divide the channel, or arise between the shore and the channel, leaving only a narrow stream.

We are of the opinion that if the patents for these islands are valid, the owners of the islands could not build or fill in between said islands and the shore in such manner as to cut off access to the channel.

We are further of the opinion that the shore owners can dredge out the river or take such precaution as may be necessary to prevent the river from filling up so as to interfere with their ingress and egress over the water.

Very truly yours,

Frank Driscoll

Assistant City Solicitor.

F.D.
R.R.S.

CITY SOLICITOR'S OFFICE

September 23rd, 1920.

In re: Islands in the Patapsco River.

Roland R. Marchant, Esq.,
City Solicitor.

Dear Sir:-

I have received the report of E. Donovan Hans in reference to the islands in the Patapsco River, known as Reed Bird, Bridge View and Mud Islands.

As far as the records show the patents issued by the Land Office are regular and prima facie correct, the only defect being in the patent for Mud Island where the words "not covered by navigable water" appear in the return of the Surveyor. These words, however, do now appear upon the return of the Surveyor in the other patents. This fact would make the patents void under Article 54, Section 49 of the Code.

The patent for Reed Bird Island is contested by the City and there is now pending in the Circuit Court for Anne Arundel County a bill to set the patent aside.

The patent for Bridge View Island is void because it interferes with the riparian rights of the South Baltimore Land Company, whose title extends 100 feet from the shore line and appears to take in part of this island.

The title to these islands can be impeached if the following facts can be sustained:

1. If at the time of the issuance of the patents they were

*Where is this report?
P.F.D.*

CITY SOLICITOR'S OFFICE

covered by navigable waters.

2. If they interfere with the riparian rights of the owners of the land on the shore.

Code, Art. 54, Sec. 47, 48, 49.
Bowie vs. W. M. R. R. 133 Md. 10.

3. If the Surveyor of the Counties in which the islands were situate did not personally make the survey and walk over the land.

Code, Art. 54, Sec. 30.

Reed Bird Island is totally defective for the reason that it interferes with the riparian rights of the City which, in conjunction with Anne Arundel County, owned a half acre of ground upon which rested the abutment of the old Long Bridge which, at the time the patents were issued, was the property of the City extending over the alleged island to Light Street. The description begins upon the bridge. Therefore, if fast land existed, the City was in actual possession at the time the patent was issued.

The State Roads Commission, in constructing the fill for the Hanover Street Bridge, took a deed from the assignee of the patent for a right-of-way over Reed Bird Island. This might be construed as a recognition by the State of the validity of the patent but the acceptance of the deed would be of no greater force than the patent itself and, if the patent is void, no action by another agency of the State could make it valid.

While the titles of the owners of the land on what was formerly the Baltimore County Shore do not extend to the channel, still the owners have riparian rights, i.e. to build out into the water and also are entitled to ingress and egress to their lands over the water. This right, however, is subject to the action of the elements, which may add to or take away from their holdings. Thus they would be entitled to all accretions making out from their lands and would, at the same time,

CITY SOLICITOR'S OFFICE

have to suffer from the formation of any islands in the bed of the river, which might divide the channel, or arise between the shore and the channel, leaving only a narrow stream.

We are of the opinion that if the patents for these islands are valid, the owners of the islands could not build or fill in between said islands and the shore in such manner as to cut off access to the channel.

We are further of the opinion that the shore owners can dredge out the river or take such precaution as may be necessary to prevent the river from filling up so as to interfere with their ingress and egress over the water.

Very truly yours,

F.D.
R.R.S.

Assistant City Solicitor.

COPY

From file 27127

EVAN DONOVAN HANS
ATTORNEY AT LAW
321 TITLE BUILDING
BALTIMORE, MD.

September 16, 1920.

Roland R. Marchant, Esq.,
City Solicitor,
Court House, Baltimore, Md.

Dear Sir :

I have completed my investigation with reference to the respective rights of the riparian owners and the owners of the three islands hereinafter referred to, in and to the Patapsco River, and report as follows :

I have prepared a plat to be used in connection with this report and submit the same herewith. I have shown on the plat the outlines of each lot affected by the investigation and have given in each instance, as definitely as possible, all calls to specific objects such as stones, stakes, etc. set up along the margin of the River. Taking the Sanford lot as an instance, it will be noted that the description at one end of the lot calls for a stone and stake at the margin of the River and that at the other side of the lot the description calls for "two large bounded sycamore trees growing from one root at high water mark". The plat was prepared solely from information obtained from the records and does not purport to conform with existing physical conditions,

such as would be shown by an actual survey.

The balance of this report will be made, first, with reference to the Baltimore County side of the River ; secondly, with reference to the Anne Arundel County side of the River ; thirdly, with reference to the islands and fourthly, my conclusions.

BALTIMORE COUNTY SIDE

All of the lots on the Baltimore County side of the Patapsco River, shown on the accompanying plat, were originally part of a tract of land known as "Kreb's and Warner's Terra Firma", which tract, containing six hundred and sixty-eight acres, was patented February 10, 1825, to William Krebs and Michael Warner. The description as contained in the patent, after running along the margin of the water of the middle branch of the Patapsco River, calls for a point which is supposed to divide the middle branch from the southwest branch of said River. By referring to the accompanying plat it will be noted that this point is at the northeasternmost corner of the Klein lot. From said point the description runs "up and binding on the margin of the water in said River the twenty-two following courses, etc." These twenty-two courses embrace all of the shore front on the Baltimore County side within the area

shown on the accompanying plat. It is obvious from the language used in the patent that the grant extended only to the margin of the River and that the State did not, by granting said patent, part with its title to any portion of the bed of said River.

In the year 1851 a partition was made of a large part of the original tract of Terra Firma by deed of partition recorded in A.W.B. No. 458, folio 1, and for the first time descriptions were set up of the separate lots, which descriptions in many instances, have remained the same to the present time. The descriptions used in said deed of partition made specific calls to stones, stakes and trees, planted in the margin of the River, all of which calls are in each instance shown on the accompanying plat. The allottees under said deed of partition and their successors in title down to the present time have apparently never assumed to own any portion of the bed of the River as is evidenced in each instance by the specific calls contained in the descriptions of the various lots, to stones, stakes, etc. along the margin of the River. In my opinion, therefore, the riparian owners along the Baltimore County shore have title only to the margin of the river ; which would, of course, include accretions.

ANNE ARUNDEL COUNTY SIDE

The ancient titles on this side of the River, as well as the original patents, are somewhat obscure. The titles chain back to a tract of land originally known as "Duck Cove". There is no record in the Land Office of the issuance of a patent for Duck Cove. A patent was issued however, for "Duke's Cove" (Patents 14 folio 244) and from the various references appearing in the titles, it is safe to assume that Duck Cove and Duke's Cove were one and the same tract. My abstract of the patent does not show the date of its issuance but the original warrant was issued in the year 1659 and the patent was probably issued shortly thereafter. The description in the original patent is somewhat obscure, beginning at a bounded white oak upon a point by a great marsh and running down the River and bounding on the River and on the Cove called the Duke Cove to a bounded oak standing at the head of said Cove, etc. It would be difficult to locate the original outlines of Duck Cove with reference to existing conditions but the calls in the patent to the River and the courses bounding on the River are, in my opinion, sufficient to establish the fact that the State did not by said patent part with its title to any portion of the bed of said River.

In 1858 a large portion of the tract known as Duck Cove, together with six or seven other tracts, were

acquired by the Patapsco Company of Baltimore. This Company had a resurvey made of all of its acquisitions, totalling in the neighborhood of three thousand acres. The entire acreage extending back to Curtis Creek was repatented under the name of "Brooklyn" by which name it has been known to the present time. The description in the patent of Brooklyn is extremely lengthy and at one point runs into the water of the Patapsco River to a point one hundred feet from the shore line and runs thence parallel to the shore line keeping at the distance of one hundred feet therefrom. As far as I can ascertain at this time the one hundred foot extension into the water is in front of the lots shown on the accompanying plat. It seems to me there can be no doubt that the Patapsco Company under said patent acquired title out into the Patapsco River for a distance of one hundred feet from the shore. To plat definitely the original outlines of "Duck Cove" as well as the outlines of "Brooklyn" would require considerable additional time and would involve the platting of certain adjoining areas in which we are not interested. In my opinion the investigation as made is sufficiently exhaustive for present purposes.

The descriptions of the separate lots on the Anne Arundel County side of the River, in most instances, call either to a stone planted on the shore of the River or call to the south shore of the River itself. The courses then run with the meanders of the shore. The

Crisp lot for instance, as shown on the plat, begins at a stone on the south shore of the River at the water's edge while Acton's Park lot begins on the south shore of the River itself. The Seevers lot as shown on the plat calls for a stone planted in the south shore of the Patapsco River and runs thence with the meanders of said shore, etc. This lot has since been divided into many smaller lots, the descriptions in most instances calling to the shore of the River and run thence with the meanders of said shore.

In my opinion the State has never parted with its ownership of the bed of the Patapsco River on the Anne Arundel County side except to the extent of one hundred feet as hereinbefore stated in the patent for "Brooklyn".

ISLANDS

REED BIRD ISLAND - lying in Anne Arundel County (now City) was patented September 10, 1909, to John P. Bruns, and contained thirty-three and three-quarter acres (Patents E.S.T. No. 1 folio 217). The surveyor, in making his return to the Land Office, stated in his certificate that "the above described land is not covered by navigable water. By deed dated December 3, 1910, and recorded among the land records of Anne Arundel County in

Liber G.W. No. 83, folio 184, etc., this island was conveyed by said Bruns to Harry M. Wagner, in whose name it now stands. By deed dated May 5, 1916, (G.W. No. 125, folio 202) the said Harry M. Wagner granted and conveyed to the State of Maryland a right of way, for street purposes, across said island ; said deed reserving unto the said Wagner the fee in said island and also the "privilege of unloading materials from said State road upon his said land for grading upon the same". This island was assessed on the Tax Books of Anne Arundel County in 1912 at one hundred and fifty dollars per acre making a total assessment of five thousand and fifty-six dollars. On March 28, 1916, the Mayor and City Council of Baltimore brought suit in the Circuit Court of Anne Arundel County against the said John P. Bruns and Harry M. Wagner for the purpose of having the patent for Reed Bird Island declared null and void. The case is still open on the docket, the last entry being the General Replication filed September 2, 1916.

BRIDGE VIEW - being an island in Anne Arundel County (now City) was patented August 28, 1907, to William Talbott and Charles H. Lewis and contained ten and ninety-six one-hundredths acres (Patents E.S.T. No. 1 folio 91). A warrant for a resurvey was issued out of the Land Office on August 13, 1912, but no further

proceedings were had. By deed dated August 20, 1920, and recorded among the land records of Baltimore City this island was conveyed by Charles H. Lewis, et al. to C.C.Tracey in whose name it now stands. There is no assessment on the Tax Books against this island. The surveyor in making his return to the Land Office stated in the certificate that "no portion of the above described land is covered by navigable water". This island is sometimes erroneously referred to as "Ridge View Island".

MUD ISLAND - lying in Baltimore County (now City) was originally patented December 22, 1905, to Charles H. Lewis and William M. Talbott, and contained twelve and forty-eight one-hundredths acres (Patents W.O.M. No. 1 folio 616). Under a warrant of resurvey, a later patent was issued to the same parties, May 17, 1913, and contained twenty-three and eight-tenths acres (Patents E.S.T. No. 1, folio 557). By deed dated August 20, 1920, and recorded among the land records of Baltimore City, this island was conveyed by Charles H. Lewis, et al. to C.C.Tracey in whose name it now stands. The surveyor's certificate in this instance made no mention as to whether or not the land was covered by navigable water. I inquired of Mr. Sheppard, the present commissioner of the Land Office, as to whether or not the omission, by the surveyor, of such a statement was fatal ; in other words whether or

not such an allegation was jurisdictional. He stated that he would not care to pass upon the matter in such an informal way but that during his tenure of office he has always required a surveyor to specifically state whether or not any land along a navigable river was, or was not, covered by the water. During the conversation Mr. Sheppard also advised me that there are as many as twelve patents now pending before him for land and islands in this immediate vicinity. Mud Island was first assessed on the Tax Books of Baltimore County in 1911, at two hundred dollars an acre, which assessment was abated in 1915 to one hundred dollars per acre.

CONCLUSIONS

In conclusion it is my opinion that the State has never parted with its title to the bed of the Patapsco River, except to the extent of one hundred feet as set forth in the patent of "Brooklyn". The parties themselves, who from time to time have owned the various lots, have apparently never assumed to own any portion of the bed of the River, as is evidenced by the specific calls to stakes, stones, etc. appearing in the various deeds down to the present time.

Inasmuch as the title to the bed of the River remained in the State it would follow that the islands above referred to were likewise the property of the State and immediately upon their formation above water became patentable and capable of being privately owned. As the patents in each instance appear to have been regularly issued, I am of the opinion that the patentees and their successors in title have a prima facie good title to the same. Whether or not the islands were in fact patentable, by reason of being at times covered by navigable water,^(c) I have no means of ascertaining from the records and that would have to be a fact established from evidence obtained outside the records.^x If, however, at the time of the issuance of the patents any portion of the islands, no matter how small, was not covered by the water, the patents would in my opinion be good as to the part not so covered and the patentee would thereafter become entitled to any accretions which formed onto the part not covered by water. (4)

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The code prescribes certain pre-requisites to the issuance of patents, such as the giving of notices by the surveyor, etc. There is no way of ascertaining from the records in the Land Office if all of the pre-requisites have been complied with ; the only records

available being the original warrant ; the surveyor's certificate or return and the patent itself. There is also no way of ascertaining with any degree of certainty, if patents which have heretofore been issued by the Land Office conflict with or overlap any of the land under consideration. It is entirely possible that patents which were issued years ago under different names might conflict with or include some of the land involved in this investigation. The records in the Land Office are not in such form as to ascertain definitely if such is the case.

I understand the contention of certain riparian owners is that the patenting of the islands in question deprived them of their rights as riparian owners to make improvements into the water in front of their land. The Act of 1862 which confers this right expressly states that a riparian owner shall have the exclusive right of making improvements "into the water" in front of his land. Without having thoroughly investigated the authorities, I am personally inclined to be of the opinion that the Act of 1862 was not intended to cover a situation such as is involved in this case. Whether a court would construe said Act as giving to a riparian owner the right to build across the water in front of his land and then across an

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R.R.M.

9-16-20

island in order to reach a navigable channel, I am not prepared to say.

For convenience I have also shown on the accompanying plat "Northeast Bridge Side" and "Southwest Bridge Side".

Very truly yours,

B.D. Haas.

ROLAND R. MARSHANT,
CITY SOLICITOR.
ALLEN A. DAVIS,
DEPUTY CITY SOLICITOR.
FRANK DRISCOLL,
A. WALTER KRAUS,
HORTON S. SMITH,
ASSISTANT CITY SOLICITORS.

Department of Law

Henry M. Weeks, Clerk
Court House
Baltimore, Md.

EDWARD F. JOHNSON,
GENERAL ASSISTANT
GEORGE ECKHARDT, JR.
SIMON E. SOBELOFF,
SPECIAL ASSISTANTS

IN REPLY REFER TO FILE NO. _____

November 18th, 1920.

Mr. Robert Garrett, Chairman,
Public Improvement Loan Commission,
c/o Robert Garrett & Sons,
Garrett Building,
City.

My dear Mr. Garrett:-

Pursuant to the talk which we had just before the last meeting of your Board, I submit the following statement with reference to the negotiations between the City and the owners of certain islands on the Patapsco flats.

These islands are three in number known as Reed Bird Island, Mudd Island and Bridge View Island and are situated in the Patapsco River between the mouth of the river as the same flows or enters into the Middle Branch of the Patapsco and the bridge of the Curtis Bay branch of the Baltimore & Ohio Railroad. The islands are shown on an attached blue print prepared by Major Shirley of the Topographical Survey Commission. A brief description of each is as follows:-

REED BIRD ISLAND - lying in Anne Arundel County (now City) was patented September 10th, 1909, to John P. Bruns, and contained thirty-three and three-quarter acres (Patents E. S. T. No. 1, folio 217). The surveyor, in making his return to the Land Office, stated in his certificate that "the above described land is not covered by navigable water." By deed dated December 3, 1910, and recorded among the land records of

R. G. #2.

Anne Arundel County in Liber W. G. No. 83, folio 184, etc., this island was conveyed by said Bruns to Harry M. Wagner, in whose name it now stands. By deed dated May 5th, 1916, (G. W. No. 125, folio 202) the said Harry M. Wagner granted and conveyed to the State of Maryland a right of way, for street purposes, across said island, said deed reserving unto the said Wagner the fee in said island and also the "privilege of unloading materials from said State road upon his said land for grading upon the same." This island was assessed on the Tax Books of Anne Arundel County in 1912 at one hundred and fifty dollars per acre, making a total assessment of five thousand and fifty-six dollars.

BRIDGE VIEW ISLAND - being an island in Anne Arundel County (now City) was patented August 28th, 1907, to William Talbott and Charles H. Lewis and contained ten and ninety-six one-hundredths acres (Patents E. S. T. No. 1, folio 91). A warrant for a resurvey was issued out of the Land Office on August 13, 1912, but no further proceedings were had. By deed dated August 20, 1920, and recorded among the land records of Baltimore City, this island was conveyed by Charles H. Lewis, et al. to C. C. Tracey in whose name it now stands. There is no assessment on the Tax Books against this island.

MUDD ISLAND - lying in Baltimore County (now City) was originally patented December 22, 1905, to Charles H. Lewis and William M. Talbott, and contained twelve and forty-eight one-hundredths acres (Patents W. O. M. No. 1, folio 616). Under a warrant of resurvey, a later patent was issued to the same parties May 17th, 1913, and contained twenty-three and eight-tenths acres (Patents E. S. T. No. 1, folio 557). By deed dated August 20, 1920, and recorded among the land records of Baltimore City, this island was conveyed by Charles H. Lewis, et al. to C. C. Tracey, in whose

R. G. #3.

name it now stands.

The circumstances surrounding the negotiations are as follows,-

Early in the past summer, several of the City officials became much exercised concerning the announcement by the local Government engineer in charge of dredging that the dredging work to be done in Baltimore harbor, as provided for by the appropriation of Congress, would be discontinued, unless the City, at an early date, provided adequate area for dumping or depositing the dredged material. It was estimated that in dredging the Baltimore harbor 4,400,000 cubic yards of material would be removed, of which 1,100,000 cubic yards would be dredged from the Spring Garden Channel. The only available space for depositing this material was behind the McComas street bulkhead and it was estimated that this space would care for only 400,000 cubic yards. Thus it became necessary to find space for dumping 700,000 cubic yards from the Spring Garden Channel and for 3,000,000 cubic yards from channels in other parts of the Baltimore harbor.

The above facts were presented to the Board of Estimates and the members of the Board, the Mayor and the Chief Engineer, took a lively interest in the situation, with the result that the Chief Engineer obtained an option to purchase the three islands described. The option provided that the City should pay \$80,000 for Mudd Island and Bridge View Island and \$125,000 for Reed Bird Island. At the meeting of the Board of Estimates on July 28th, 1920, (not attended by me because of absence from the City) the Board, on motion of President Bryant, decided to exercise the option to purchase the islands at the prices above named, subject to the approval of the titles by this office.

It is proper for me to say that I entered upon the examination of these titles with full knowledge that the negotiations were conducted by all parties having in mind the use to which the islands were to be put, that is, that the City contemplated the acquisition of the legal title to the islands as a means to acquire the right to use the whole of the flats between the shore lines as a dumping place for dredged material. To throw light on this question it occurred to me that it was necessary to make a complete investigation of the title to the several riparian lots on either shore of the river. In this connection I submit a title plat showing each lot affected. This plat was prepared solely from information obtained from the records and does not purport to conform to the existing physical conditions as the same would be shown by an actual survey.

Asking you to bear in mind that the title to the islands themselves, as well as the right of the City to fill in between the shore and the islands, depends in a great degree upon the nature of the title of the riparian owners, I will comment first upon the title of the owners.

BALTIMORE COUNTY SIDE.

All of the lots on the Baltimore County side of the Patapsco River, shown on the accompanying plat, were originally part of a tract of land known as "Kreb's and Warner's Terra Firma", which tract, containing six hundred and sixty-eight acres, was patented February 10, 1825, to William Krebs and Michael Warner. The description as contained in the patent, after running along the margin of the water of the middle branch of the Patapsco River, calls for a point which is supposed to divide the middle branch from the south-

west branch of said river. By referring to the accompanying plat it will be noted that this point is at the northeasternmost corner of the Klein lot. From said point the description runs "up and binding on the margin of the water in said river the twenty-two following courses, etc." These twenty-two courses embrace all of the shore front on the Baltimore County side within the area shown on the accompanying plat. It is obvious from the language used in the patent that the grant extended only to the margin of the river and that the state did not, by granting said patent, part with its title to any portion of the bed of said river.

In the year 1851 a partition was made of a large part of the original tract of Terra Firma by deed of partition recorded in A. W. B. No. 458, folio 1, and for the first time descriptions were set up of the separate lots, which descriptions in many instances, have remained the same to the present time. The descriptions used in said deed of partition made specific calls to stones, stakes and trees, planted in the margin of the river, all of which calls are in each instance shown on the accompanying plat. The allottees under said deed of partition and their successors in title down to the present time, have apparently never assumed to own any portion of the bed of the river as is evidenced in each instance by the specific calls contained in the descriptions of the various lots, to stones, stakes, etc. along the margin of the river. In my opinion, therefore, the riparian owners along the Baltimore County shore have title only to the margin of the river, which would, of course, include accretions.

ANNE ARUNDEL COUNTY SIDE.

The ancient titles on this side of the river, as well

as the original patents, are somewhat obscure. The titles chain back to a tract of land originally known as "Duck Cove". There is no record in the Land Office of the issuance of a patent for Duck Cove. A patent was issued however for "Duke's Cove" (Patents 14 folio 244) and from the various references appearing in the titles, it is safe to assume that Duck Cove and Duke's Cove were one and the same tract. My abstract of the patent does not show the date of its issuance but the original warrant was issued in the year 1659 and the patent was probably issued shortly thereafter. The description in the original patent is somewhat obscure, beginning at a bounded white oak upon a point by a great marsh and running down the river and bounding on the river and on the cove called the Duke Cove, to a bounded oak standing at the head of said cove, etc. It would be difficult to locate the original outlines of Duck Cove with reference to existing conditions, but the calls in the patent to the river and the courses bounding on the river are, in my opinion, sufficient to establish the fact that the state did not by said patent part with its title to any portion of the bed of said river.

In 1858 a large portion of the tract known as Duck Cove, together with six or seven other tracts, were acquired by the Patapsco Company of Baltimore. This company had a resurvey made of all of its acquisitions, totalling in the neighborhood of three thousand acres. The entire acreage extending back to Curtis Creek was repatented under the name of "Brooklyn", by which name it has been known to the present time. The description in the patent of Brooklyn is extremely lengthy and at one point runs into the water of the Patapsco River to a point one hundred feet from the shore line and runs thence parallel to the shore line keeping at the distance of one hundred feet therefrom. As far as I can ascertain at this time the one

hundred foot extension into the water is in front of the lots shown on the accompanying plat. It seems to me there can be no doubt that the Patapsco Company under said patent acquired title out into the Patapsco River for a distance of one hundred feet from the shore. To plat definitely the original outlines of "Duck Cove" as well as the outlines of "Brooklyn", would require considerable additional time and would involve the platting of certain adjoining areas in which we are not interested. In my opinion the investigation as made is sufficiently exhaustive for present purposes.

The descriptions of the separate lots on the Anne Arundel County side of the river, in most instances, call either to a stone planted on the shore of the river or call to the south shore of the river itself. The courses then run with the meanders of the shore. The Crisp lot for instance, as shown on the plat, begins at a stone on the south shore of the river at the water's edge while Acton's Park lot begins on the south shore of the river itself. The Seevers lot as shown on the plat calls for a stone planted in the south shore of the Patapsco River and runs thence with the meanders of said shore, etc. This lot has since been divided into many smaller lots, the descriptions in most instances calling to the shore of the river and run thence with the meanders of said shore.

In my opinion the state has never parted with its ownership of the bed of the Patapsco River on the Anne Arundel County side, except to the extent of one hundred feet as hereinbefore stated in the patent for "Brooklyn".

Inasmuch as the Patapsco River is a navigable river within the meaning of the law in this State, that is, a place where the tide ebbs and flows, the State had the right to issue patents to the several is-

R. G. #8

lands in question, provided these patents were issued in accordance with the provisions of Article 54 of the Code.



TITLE GUARANTEE & TRUST COMPANY

TITLE BUILDING, ST. PAUL & LEXINGTON STS.

27127

ALBERT G. TOWERS, PRESIDENT	R. CECIL HOGAN, ASST SECY TREAS
J. DUKES DOWNES, VICE PRESIDENT	ALEX. KINNAIRD, ASST SECY TREAS
JOHN H. DUNCAN, VICE PRES. & SECY	J. MILTON BRANDT, ASST SECY TREAS
C. ALEX. FAIRBANK, VICE PRESIDENT	BENJAMIN H. HEATH, ASST TREASURER
ALBERT N. SMITH, VICE PRESIDENT	WM. D. POULTNEY, REAL ESTATE OFFICER
WARREN S. SEIPP, VICE PRESIDENT	GEO. HARRISON, MANAGER SAVINGS DEPT
THOMAS B. MARSHALL, TREASURER	

BALTIMORE, MD.

Sept. 9, 1920.

Roland R. Marchant, Esq., Atty.,
Department of Law,
Courthouse, Baltimore, Md.

Dear Mr. Marchant:-

I have observed in today's "Sun",
that the City is about to close the deal for the purchase
of Mud Island, Reed Bird Island and Ridge View Island
near the Brooklyn Shore of the Patapsco.

I should be very glad to receive
the examination of these titles from you.

Trusting to be favored with the
examinations and thanking you for your interest in the
matter, I beg to remain,

Very truly yours,

hw:JHD

Vice-President.

ROLAND R. MARCHANT,
CITY SOLICITOR.
ALLEN A. DAVIS,
DEPUTY CITY SOLICITOR.
FRANK DRISCOLL,
A. WALTER KRAUS,
HORTON S. SMITH,
ASSISTANT CITY SOLICITORS.

Department of Law,

Henry M. Weeks, Clerk
Court House
Baltimore, Md.

EDWARD F. JOHNSON,
GENERAL ASSISTANT
GEORGE ECKHARDT, JR.
SIMON E. SOBELOFF,
JOHN L. CORNELL,
SPECIAL ASSISTANTS

IN REPLY REFER TO FILE NO. _____

August 9th, 1920.

Roland R. Marchant, Esq.,
City Solicitor.

Dear Sir:-

Replying to the letter of July 29th,
from the Clerk of the Board of Estimates addressed to you,
enclosing extracts of an executive session of the Board of
Estimates in reference to the acquisition of Mud Island,
Bridge View Island and Reed Bird Island. I have been ex-
amining this title and I have also made several trips to the
property in question and am of the opinion that the patents
upon which the vendors claim title are void.

I went into this matter two years ago
and arrived at the opinion (which was concurred in by the then
City Solicitor,) that said patents were void, and that said
islands were either the property of the City ^{or the} owners of the
shore adjacent to these islands, as part of their riparian
rights.

An examination of the Islands show very
little change since that time, excepting Reed Bird Island on
the northeast side is gradually being washed away, and it will

only be a very short time before the waters of the Patapsco River will cover all the land up to the slopes of the fill of the Hanover Street Bridge. I find that the water is much deeper now than two years ago at Reed Bird Island. I also discovered a growth of cat-tails between Bridge View Island and what would be the northeast end of Reed Bird Island, (which is northeast of the fill on Hanover Street Bridge.) At a distance it looks as though Bridge View Island and Reed Bird Island had met, but I was unable to get very near on account of the flats, and I also discovered that at low water the flats around Mud Island extend to the mainland.

Mr. Charles H. Stein, representing John Sanford who is the owner of a lot of ground on the shore opposite Mud Island, claims as his riparian rights that part of Mud Island opposite Mr. Sanford's land.

I enclose you some correspondence taken from file No. 22084, between Mr. Field and myself, and which I think covers the whole matter in controversy.

Very truly yours,

Frank Driscoll

Assistant City Solicitor.

F.D.
JHR.

BOARD OF ESTIMATES.

HOWARD BRYANT,
President Second Branch City Council
PRESIDENT

WILLIAM F. BROENING,
Mayor

GEORGE F. WIEGHARDT,
Highways Engineer

ROLAND R. MARCHANT,
City Solicitor

PETER E. TOME,
Comptroller
SECRETARY

C. H. SUMWALT,
Deputy Comptroller,
CLERK



July 29, 1920.

Roland R. Marchant, Esq.,
City Solicitor.

Dear Sir:-

Following is extract from executive session of the
Board of Estimates of July 28th:-

"Committee consisting of Chief Engineer Perring, Highways Engineer Christhilf, and Harbor Engineer Hill, recommended that the City exercise its right of option on purchase of Reed Bird, Mud and Ridge View Islands, for use as dumping grounds at the following prices:

Mud Island and Ridge View Island,
situated in the Patapsco River
between the B.&O. Railroad Bridge
and the Hanover Street Bridge -
70 acres - \$80,000.

Reed Bird Island, situated on both sides
of the roadway between Brooklyn
and the Hanover Street Bridge -
33 acres - \$125,000.

"On motion of President Bryant, the Board decided to exercise the option, and the matter was referred to the City Solicitor as to question of title."

Yours truly,

WSH/EAC.

Clerk.

Taken from file 27127

CITY SOLICITOR'S OFFICE

from file 27127

July 28th, 1920.

Honorable William F. Broening,
Mayor of the City of Baltimore,
City Hall, City.

Dear Sir:-

In compliance with your request we have visited and examined the three islands in the Patapsco River in the vicinity of Hanover Street bridge, known as "Reed Bird Island", "Mid Island," and "Ridge Island", in order that we might give you our opinion of their value."

COPY
Title to these islands, we are informed was acquired by letters patent from the State of Maryland.

This land is not usable in its present condition as it is submerged during high tide and only a few inches above the water at low tide.

Its value, therefore, is small except to an owner able to bulldoze and fill it.

"Reed Bird Island" contains about 30 acres and is bisected by the lower end of the Hanover Street bridge. We would value this land at about 7¢ per square foot, or \$3,000. per acre.

"Mid and Ridge" Islands containing about 70 acres, lie much further from the channel - are larger in area and are not accessible over any existing streets or roads. \$1,000. per acre seems a very liberal estimate of their value.

Very truly yours,

(Signed) HARRY E. GILBERT,

(Signed) ORRISON HILTON DENNIS.

WM. L. MARBURY
FRANK GOSNELL
GEO. WEEMS WILLIAMS
JESSE SLINGLUFF
WILLIAM L. RAWLS
L. VERNON MILLER

LAW OFFICES
MARBURY, GOSNELL & WILLIAMS
MARYLAND TRUST BUILDING
CALVERT & REDWOOD STREETS
BALTIMORE

TELEPHONE ST. PAUL 2587

CABLE ADDRESS
"EMGE"

(2-W-8524)

November 18th, 1919.

Subject: REED BIRD ISLAND

Hon. Frank Driscoll,
Assistant City Solicitor,
Court House, City.

Dear Sir:

I have your letter of the 13th inst. in which you said regarding the above matter that all you could do was to submit your former proposition which you said you would recommend to the City Solicitor, namely, "that we will dismiss the proceedings now pending in the Circuit Court for Anne Arundel County if your client will deed all that part of Reed Bird Island lying northeast of the southwest side of the old Light Street Bridge. If this is not agreeable we might as well arrange for a trial of the case and thus settle the matter."

This proposition was submitted in your letter of May 21st, 1918, and was rejected by our client in our letter of May 21st, 1918, in which we said in part as follows:

"We do not understand your proposition in view of the fact that in our recent conversation referred to by you it was suggested that a bulkhead be constructed alongside the line of the old Light Street Bridge nearest to the new state road, our suggestion being that the city pay for this bulkhead. This would give our clients the use of the water alongside of this bulkhead, the idea being that the land there now being in front thereof might or should be removed, and which would give the city certain riparian rights in front of the street, which runs to where the old bridge-head stood and which street you said the city owned under the new Annexation Act, and which riparian rights you were particularly and specifically desirous and anxious to secure for the city."

Hon. Frank Driscoll

-2-

November 18th, 1919.

In reply to this letter I received an unsigned letter from you under date of June 24th, 1918, in which you say:

"In reference to Reed Bird Island, I beg to say that I have submitted your proposition for a compromise to the Harbor Board and they will not consent to building a bulkhead as proposed. This is a matter which comes under their jurisdiction so that without their approval we cannot enter into a compromise which requires the building of a bulkhead or the making of any other improvements at this location."

We have noticed in the local press from time to time items to the effect that the United States Government is prepared to do certain dredging in the channel in the vicinity of Reed Bird Island provided the City will designate an appropriate place for the disposal of material so dredged from the channel, in view of which I am writing to ask whether there is any objection upon your part for our clients or ourselves, or both of us, to appear before the Harbor Board (you to be present, of course) and see if some arrangements cannot be made whereby we can facilitate this dredging, which might result in the sale of the Island to the City or some other satisfactory adjustment to end the litigation.

We desire to add, as we have always said, that our correspondence is without prejudice and with the sole view, if possible, to reach a settlement by way of compromise of the pending litigation.

Of course, you will see from the foregoing that we are not willing to accept your proposition as contained in your letter of the 13th inst. and if you have no other or different proposition to make, and you object to our appearing before the Harbor Board, as above suggested, then I see that nothing else can be done except for

Hon. Frank Driscoll

-3-

November 18th, 1919.

you to proceed with the trial of the case, which we would thank you to do with reasonable promptness. We assure you we will do everything in our power to bring about an early hearing.

Very truly yours,

Samuel

19815

November 13th, 1919.

Frank Gosnell, Esq.,

700 Maryland Trust Bldg.,

City.

Dear Sir:

Regarding the Reed Bird Island matter, all I can do is to submit my former proposition, which I shall recommend to the City Solicitor, i.e. that we will dismiss the proceedings now pending in the Circuit Court for Anne Arundel County if your client will deed all that part of Reed Bird Island lying northeast of the southwest side of the old Light Street Bridge.

If this is not agreeable we might as well arrange for a trial of the case and thus settle the matter.

Very truly yours,

F.D.
R.R.S.

Assistant City Solicitor.

S. S. FIELD,
CITY SOLICITOR
ALEXANDER PRINCE,
DEPUTY CITY SOLICITOR
FRANK DRISCOLL,
ROBERT F. LEACH, JR.,
BENJAMIN H. MCKINDLESS,
ASSISTANT CITY SOLICITORS.

Department of Law,

Henry W. Weeks, Clerk
Court House
Baltimore, Md.

EDWARD J. COLGAN, JR.
GENERAL ASSISTANT
GEORGE ARNOLD FRICK,
R. CONTEE ROSE,
SPECIAL ASSISTANTS

IN REPLY REFER TO FILE NO. 19815

November 8th, 1918.

S. S. Field, Esq.,
City Solicitor.

Dear Sir:

Replying to your verbal inquiry as to whether or not a plaintiff has the right to dismiss a suit pending in a court of equity and institute another suit against the same parties and with the same subject matter in another court, without the consent of the court or of the defendants, and also as to whether a suit could be instituted in another court without dismissing a pending suit, I beg to report as follows:

As this question involves the suit instituted by the City to set aside the patent for Reed Bird Island, I think I might inform you how far the pending suit in the Circuit Court for Anne Arundel County has progressed. This suit was instituted sometime prior to the passage of the Annexation Act of 1918 and Reed Bird Island at that time was situate in Anne Arundel County. The bill was filed on behalf of the Mayor and City Council of Baltimore against John P. Bruns and then an amended or supplemental bill was filed making Harry M. Wagner a defendant. The defendants were summoned and answered and a general replication was filed. No other proceedings were had and that is how the case now stands on the docket of the Circuit Court for Anne Arundel County.

The change which has taken place since the institution of the above suit is that the land is now in Baltimore City and under the

terms of the Annexation Act all suits commenced in the territory annexed to Baltimore City are to be proceeded with in the court in which they are instituted as though the Annexation Act had not been passed. Therefore, the Annexation Act does not take jurisdiction in the matter away from the Circuit Court for Anne Arundel County.

In Sec. 87 of Art. 16 of the Code it is provided as follows:

"Whenever lands lie partly in one county and partly in another, or partly in a county and partly in the city of Baltimore, or whenever persons proper to be made defendants to proceedings in chancery reside, some in one county and some in another, or some in a county and some in the city of Baltimore, that court shall have jurisdiction in which proceedings shall have been first commenced; provided, that all proceedings for any partition of real estate, to foreclose mortgages on land, or to sell lands under a mortgage, or to enforce any charge or lien on the same shall be instituted in the court of the county or the city of Baltimore where such lands lie;"etc.

Under a new bill the proper place to bring this suit would be in the Circuit Court of Baltimore City.

PLAINTIFF'S RIGHT TO DISMISS BILL.

"The general rule is that a plaintiff may at any time dismiss his bill upon payment of costs. But the rule is not without exception. When there has been any proceeding in the cause which has given the defendant a right against the plaintiff, the latter cannot dismiss his bill as of course. Thus in a suit for an account between co-partners, the plaintiff cannot, as of course, dismiss the bill after a decree to account has been passed, because after such decree each party becomes an actor; and as the final decree may be in favor of the defendant, he may have as direct an interest in the continuance of the suit as the plaintiff. The plaintiff, under such circumstances, should lay the rule further proceedings so as thereby to have a foundation for obtaining leave to dismiss his bill. In general when the dismissal would prejudice interests which have been acquired in consequence of the institution of the suit, the right of dismissal is subject to modification. A plaintiff has no right, without the previous permission of the court, to dismiss his bill as to certain plaintiffs or defendants. To allow the plaintiff this right would be an unfair advantage, and would render

S. #3.
negatory the practice as to allowing amendments as to parties."

Miller's Equity, Sec.102,p.132-33.

Where there is a decree dismissing a bill a different rule prevails.

"The dismissal of the bill may be absolute or without prejudice. An absolute dismissal, when the court determines that the plaintiff has no title to the relief sought by his bill, is a bar to any other suit brought for the same matter. But unless an absolute dismissal be upon the merits, it will not be a bar. A dismissal without prejudice is not a bar to another suit brought for the same cause of action."

Miller's Equity, Sec.266, p.331-32.

According to the above authorities the City would have the right to dismiss the bill now pending in the Circuit Court for Anne Arundel County without prejudice and institute a new bill in Baltimore City.

There has been a prevailing practice in Baltimore City to institute a suit in the Circuit Court of Baltimore City and then bring another suit in the Circuit Court No. 2 of Baltimore City against the same party with the same subject matter. This has been done frequently in divorce cases and in talking with one of the clerks of the Circuit Court of Baltimore City I was informed that Judge Hueisler on one occasion refused to sign a decree until the costs had been paid in the case in the other court; but that Judge Ambler had signed a decree when there was another case pending in the other court and would not insist upon the payment of the costs in the other court, claiming that the Court he was sitting in had no right to inquire into whether the costs had

been paid in the other court, and as there had not been a decree in that court then the court giving the decree should not consider anything which took place in the court where the other case was pending. I inquired among several clerks of the court and they were of the opinion that the suit could be brought in any court where the defendant lived, although there had been a previous suit filed in another court. I might add that both of the defendants in the Reed Bird Island case reside in Baltimore City.

I have had the data ready to file the proceedings against Bridge View and Mud Island for sometime. No suit has ever been filed to set aside these patents, and, therefore, if you think it necessary we can proceed at once or would you rather try out Reed Bird Island first?

Very truly yours,

F.D.
R.R.S.

Frank Driscoll
Assistant City Solicitor.

159815
September 20th, 1918.

YOCKEL'S PARK

Assessment (Southern Products Co.)

100 acres at \$30.00 an acre\$3,000.00

Buildings\$31,027.52

Plat of Brooklyn, Anne Arundel County, recorded in Liber
N.H.G. No. 10, folio 355.

Assessment (Yockel's Park Property)

Land\$1,500.00

Improvements\$12,502.60

Tax Department of Anne Arundel claims the above property to be 1 1/4 acres.

Frederick Yockel

:

Liber G.W. No. 147, folio 299.

to

:

\$5.00.

John H. Geis and wife.

:

Beginning for the first on the south side of the Patapsco
River at the intersection of the south side of Water street with said River;
and running thence easterly along the south side of Water street 145 feet to
the west side of Second street; thence southerly along the west side of
Second street 180 feet to the south side of an alley laid out 30 feet wide;
thence along the south side of said alley westerly 153 feet to the waters
of the Patapsco River; thence bounding on the waters of the Patapsco River
to the place of beginning.

Beginning for the second thereof on the north side of
Chesapeake street at the end of the 106 foot line from the intersection of
said street with First street as laid out on the plat of the City of
Brooklyn and running thence along the north side of Chesapeake street
easterly 124 feet to the west side of Second street; thence along the west

side of Second street north 150 feet to the south side of a thirty-foot alley; thence westerly 124 feet and thence southerly 150 feet to the beginning.

John H. Geis and	:	March 15th, 1918.
Sallie S. H. Geis, his wife,	:	Liber G.W. No. 147, folio 300.
Mortgage to	:	\$8,000.00.
Frederick Yockel.	:	Five years at 5%.

Liber G.W. No. 83, folio 164 - John P. Bruns, et al. to
John McLeod and others.

Certified copy of certificate and plat of Reed Bird Island
patented by John P. Bruns September 10th, 1909.

S. S. FIELD,
CITY SOLICITOR.
ALEXANDER PRESTON,
DEPUTY CITY SOLICITOR
FRANK DRISCOLL,
ROBERT F. LEACH, JR.,
BENJAMIN H. MCKINDLESS,
ASSISTANT CITY SOLICITORS.

Department of Law,
Henry M. Weeks, Clerk
Court House
Baltimore, Md.

EDWARD J. CAGAN, JR.
GENERAL ASSISTANT
GEORGE ARNOLD FRICK,
R. CONTEE ROSE,
SPECIAL ASSISTANTS.

IN REPLY REFER TO FILE NO. 22084


August 15th, 1918.

Frank Driscoll, Esq.,
Assistant City Solicitor.

Dear Sir:-

Please get all the facts and data
together, and have the suit ready to file upon
my return, in reference to Mud Island, Reedbird
Island and Bridge View.

Very truly yours,


City Solicitor.

SSF/SBS

S. S. FIELD,
CITY SOLICITOR.
ALEX. ANDER PRESTON,
DEPUTY CITY SOLICITOR
FRANK DRISCOLL,
ROBERT F. LEACH, JR.,
BENJAMIN H. MCKINDLESS,
ASSISTANT CITY SOLICITORS.

Department of Law,

Henry M. Weeks, Clerk
Court House
Baltimore, Md.

EDWARD J. COLGAN, JR.
GENERAL ASSISTANT
GEORGE ARNOLD FRICK,
R. CONTEE ROSE,
SPECIAL ASSISTANTS

IN REPLY REFER TO FILE NO. 22084

July 18th, 1918.

S. S. Field, Esq.,
City Solicitor.

Dear Sir:-

I am in receipt of your letter of July 11th, enclosing a letter from His Honor, the Mayor, under date of July 8th, in reference to two islands lying in the Patapsco River opposite Brooklyn, Md.

These islands were patented by Messrs. Talbott and Lewis under the name of "Bridge View" and Mudd Island", copies of which patents I hand you herewith. Bridge View contains 10.96 acres and Mudd Island contains 23.8 acres. I also hand you herewith a plat which will show the location of these islands.

I was considering filing a bill in equity, on behalf of the Mayor and City Council of Baltimore, setting aside the patents obtained by William M. Talbott and Charles H. Lewis, but after going over the situation I was in doubt as to whether this was a navigable or a non-navigable stream and came to the conclusion that it was a non-navigable stream and that the City was not the proper party to bring a bill in equity against the patentees.

Messrs. Talbott and Lewis filed caveats to the patent issued to Luck in the case of Southwest Bridge Side, claiming that Southwest Bridge Side was within the riparian rights of Mudd Island. The Luck patent for Southwest Bridge Side was refused and then Saulsbury filed a patent which we compromised and withdrew our objection to the granting

of said patent. Neither Mr. Lewis nor Mr. Talbott appeared in reference to the Saulsbury patent.

I have very grave doubts as to the validity of William M. Talbott's and Charles H. Lewis's patents for Bridge View and Mud Island. As this is a non-navigable stream the riparian owner is entitled to the bed of the stream and not only to accretions but to all formations arising above the water on his side of the middle line.

Goodsell vs. Lawson, 42 Md. 348, 362-3.

While there is an ebb and flow of the tide at this point it is very slight but during a heavy rain there is a good flow of the stream down the Patapsco River. Then again the fill of the Hanover Street Bridge runs across this land and while there is a provision made to construct a draw on the bridge connecting the two fills, the water under that bridge is not more than five feet deep so that a vessel of any great draught could hardly navigate it and a vessel of any great height could not get under the bridge. There is no way to reach either one of these islands from any land which is owned by the City and should either one of them connect with the mainland, I am of the opinion that they would become the property of the owners of the adjoining shore.

In the case of Linthicum vs. Coan, 64 Md. 439, the Court of Appeals decided that the Patapsco River is a navigable river in which the tide ebbs and flows. Still if it were a navigable river the Land Office could not grant a patent which interferes with the owner's riparian rights and a patent is void if it interferes with the owner's riparian rights or any other interest in the land which has become vested prior to the issuance of the patent.

Code Art. 54, Sec. 49.

And even though it were a navigable stream I think it would

S.S.F. #3.

interfere with the riparian rights of the owners of the land bordering on either shore and I am, therefore, of the opinion that no rights vest in Talbott and Lewis.

Respectfully submitted,

F.D.
R.R.S.

Frank Dunsell
Assistant City Solicitor.

July 19th, 1913.

M E M O.

Bridge View (10.96 acres) was patented August 28th, 1907, by William M. Talbott and Charles H. Lewis. This lies just west of our new bridge and very near to the Anne Arundel shore. At the time the patent was gotten out Mr. Driscoll claims that it was entirely covered by water at high water. Mr. Driscoll thinks he has sufficient proof of that fact.

Mud Island (23.8 acres) was patented November 17th, 1913, by the same parties. Mr. Driscoll says that this was entirely covered by water at the time of the patent; in fact, that it is entirely covered by water now when the water is high; that there are cat-tails growing there which can be seen above the water, but the water is above the land at high water, and of course much more so in 1913, as the effect of the fill for the new bridge has been to raise the land above and make Bridge View and Mud Island higher than they were before.

The same is true of Reed Bird Island, which was patented by John P. Bruns September 10th, 1909. This so-called island contains about 33 acres and is located near the Anne Arundel shore about 400 feet from the Brooklyn end of the old bridge, where the City owns half an acre of land. It takes in some space east of the old Light street bridge, all the intervening space between the old and the new at that location and considerable space above the new bridge. The effect of the fill for the new bridge has been to elevate this land very much, but Mr. Driscoll says that at the time of the patent it was entirely covered by water at high water, so much so that when they surveyed the land for the patent the beginning point was on our bridge.

Mr. Driscoll has a Bill in Equity pending, filed by the City, at Annapolis to vacate the patent. Mr. Driscoll also had a Bill prepared but has not filed it to vacate the patent for Bridge View and Mud Island.

If we can prove that the place within the lines of these surveys was entirely covered by water at high water then the patents are void, under the Code, Art. 54, Sec. 49, which reads as follows:

"49. No patent hereafter issued out of the land office shall impair or affect the rights of riparian proprietors, as explained and declared in the two preceding sections; and no patent shall hereafter issue for land covered by navigable waters".

The rights of the adjacent shore owners given by Sections 47 & 48 are -

1. Right of accretion, which, however, is limited to the giving to him title to land which forms from the shore out into the river, and does not give him title to any land coming up out in the river and forming toward the shore.

See Melvin's Slesinger 135 Md 537 - Waring vs Steinhart 141 Md 539
Linthicum vs. Coan, 64 Md. 454.

2. The right to build a wharf or bulkhead and extend the shore lines out into the river by construction of a wharf or bulkhead and filling in, given by Sec. 38.

Case Linthicum vs. Coan, 64 Md. 453-4.

The City's attack on the patent to Reed Bird Island is further strengthened by the fact that the City owned the bridge site of the old bridge upon and on each side of which the filling formed, and the further fact that the City owned half an acre of land at the Anne Arundel end of the bridge, and it is apparent that the patenting of this island in a third party will prevent the City from making improvements from the shore out into the stream. (Mr. Alexander Preston thinks this last proposition is not sound).

All three of these islands are within the limits of Baltimore City as extended by the Act of 1918, Ch. 82.

I want to see if I can sustain the proposition that, under Secs. 7 and 37A of the Charter, which I claim are a recognition of the title of the City to the land under water within the city limits, and sub-paragraph 8 of Sec. 6, which transfers to the City from the State all of the powers and duties of the State over the Patapsco River and tributaries; that the State's title to these navigable waters has been by this legislation transferred to Baltimore City; not irrevocably, of course, for the State could take^{it} away just as it could take away any other property of the City by a subsequent law.

CONCLUSION: Mud Island and Bridge View are not very valuable, being above the new bridge and there being no draw in the bridge and no probability of any dredging that would permit of access to this land by water. They are between the new bridge and the B. & O. bridge and would be valuable for a factory site with railroad connection but not with water connection, and unless they can be bought very cheap, I would advise that the City go ahead and contest the title.

(2) Wait until after July 30th and then bring the suit in Baltimore City instead of Anne Arundel County.

(3) For the purpose of setting aside the patents it would be prudent to have the State join with the City in the Bill, but for the purpose of establishing, if possible, that the City has the State's right it is advisable for the City to bring the suit alone.

In the case in 102 Md. 636 a Bill was filed by a man claiming title under a patent against a shore owner, and dismissed on the ground that equity had no jurisdiction, as the man under the patent was not in actual possession and had not established his title at law. (SEE also

the case of Sollers vs. Sollers, 77 Md. 148, which, however, related to the right to plant oysters. There has been no change in the statute law since the decision in Linthicum vs. Coan.

Patent in Linthicum vs Coan was granted before the passage of the act of 1862 (now sections 49 and 54 Code) now before 52 and 54 Md. being the above case

22,084.

July 19th, 1918.

Hon. James H. Preston,

Mayer of Baltimore City.

Dear Mr. Preston:-

Your letter of the 11th, enclosing a letter from Mr. William N. Talbott of the 5th, in reference to Mud Island and Bridge View, was received and referred to Mr. Driscoll, who reported to me yesterday and this morning I went over the matter pretty fully with Mr. Driscoll and Mr. Preston, and enclose you a memoranda of the conference.

It seems to me that anything like \$500 an acre is away out of the way, even if there were no question about the title. If we can prove that these places were covered by water at high water at the time the patents were issued, then the patents are no good. I am asking Mr. Driscoll to see what definite evidence he can get on that point. Before taking the matter up with Mr. Talbott, as suggested in your letter of the 8th, please let me have your views as to the value of these two little tracts of land, or rather at what price you think it would be wise for the City to buy them, as they practically have no present value.

I am returning herewith Mr. Talbott's letter of the 5th, having taken a copy for my files.

Yours very truly,

SSE/VMcG. (ENC.)

City Solicitor.

COPY.

July 5th, 1918.

Honorable James H. Preston,
Mayor of Baltimore City,
Dear Sir:-

Referring to your communication of date the 31st day of August, 1917, replying to a request from you for a figure on two Islands lying in the Patapsco River opposite Brooklyn, Md., and in which you stated that your view of the matter was that the price of \$500.00 an acre entirely out of the question, even if we have a good title to the land, which is certainly doubtful.

Mrs. Lewis requested me through her son to have you make an offer for same.

If you have any doubts as to our right, title and interest, which includes our riparian rights, I most respectfully refer you to the following adjudicated cases:

Linthicum vs. Coan, 64 MD., 439
Day vs. Day, 22 MD., 537
Wood vs. Fowler, 6 L.R.A.N.S., 162, (Kansas)
(p.173)
Buse vs. Russell, 86 MO., 209.
Minton vs. Steele, 125 MO.181
Hohsman vs. Int. Navigation Co., 214.Pa.St.566
Glassell vs. Hansen, 135 Cal., 221, 547
Tracey vs. Norwich, 39 Conn., 382
Middleton vs. Sage, 8 Conn., 221
Stover vs. Jack, 60 Pa., 339.
29 Cyc., 352

My only object in writing you is to fulfill a promise to do so at Mrs. Lewis's request, as she understands the City needs a place to dump ashes. I would be pleased to convey any offer you care to make.

Respectfully,

(Signed) Wm. N. Talbott.

S. S. FIELD,
CITY SOLICITOR.
ALEXANDER PRESTON,
DEPUTY CITY SOLICITOR.
FRANK DRISCOLL,
ROBERT F. LEACH, JR.,
BENJAMIN H. MCKINDLESS,
ASSISTANT CITY SOLICITORS.

Department of Law,
Henry W. Weeks, Clerk
Court House
Baltimore, Md.

EDWARD J. C. GAN, JR.
GENERAL ASSISTANT
GEORGE ARNOLD FRICK,
R. CONTEE ROSE,
SPECIAL ASSISTANTS.

IN REPLY REFER TO FILE NO. _____

August 7th, 1918.

S. S. Field, Esq.,
City Solicitor.

Dear Sir:

I have made investigation of Reed Bird Island, Bridge View Island and Mud Island.

I have also interviewed John N. Mackall, Chief Engineer of the State Roads Commission, John A. Johnston, 38 E. Barney Street, and Andrew Bruning, whose testimony you will find hereto attached.

I have also discovered three large advertising signs on Reed Bird Island. This will enable us to file a suit of ejectment in Baltimore City, should you find that action in Baltimore City for the recovery of these Islands should be instituted.

I am going to Annapolis one day this week to find the status of our case, instituted to set aside the patent for Reed Bird Island.

The last advice that I had was from the Clerk over the telephone, who said that no other entry appears upon the docket than the general replication filed by the City. I have been for some time trying to affect the settlement with Mr. Frank Gosnell, who represents alleged owner of Reed Bird Island, but the terms upon which he would settle were not accepted by you, and I have not been in communication with him since.

Very truly yours,

Frank Driscoll
Assistant City Solicitor.

FD/TEL

S. S. FIELD,
CITY SOLICITOR.
ALEXANDER PRESTON,
DEPUTY CITY SOLICITOR
FRANK DRISCOLL,
ROBERT F. LEACH, JR.,
BENJAMIN H. MCKINDLESS,
ASSISTANT CITY SOLICITORS.

Department of Law,
Henry W. Weeks, Clerk
Court House
Baltimore, Md.

EDWARD J. COLGAN, JR.
GENERAL ASSISTANT
GEORGE ARNOLD FRICK,
R. CONTEE ROSE,
SPECIAL ASSISTANTS.

IN REPLY REFER TO FILE NO. 22,084

July 20th, 1918.

Frank Driscoll, Esq.,
Assistant City Solicitor.

Dear Sir:-

Please take up at once the question of locating witnesses who
will testify to the following facts:

- (1) That Bridge View was entirely covered by water at high
water at the time of the patent, Aug. 28, 1907.

*John A. Johnston, 38 E Barney St. Employed by
Harbor Board*

*Andrew Bruning, occupies one of the slopes of the field
at the Hanover St. bridge*

- (2) That Mud Island was entirely covered by water at high water
at the time of the patent, Nov. 17, 1913.

*John A. Johnston, 38 Barney St "do."
John H. Mackall Chief Engineer State Roads
Andrew Bruning —*

- (3) That Reed Bird Island was entirely covered by water at the
time of the patent September 10, 1909.

*John A. Johnston 38 Barney St. "do."
John H. Mackall Chief Engineer of State Roads
Andrew Bruning —*

I have left space for you to write the names of the witnesses and
their addresses under each case. This is very important, so see what definite
information and evidence you can get promptly.

S. S. FIELD,
CITY SOLICITOR.
ALEXANDER PRESTON,
DEPUTY CITY SOLICITOR
FRANK DRISCOLL,
ROBERT F. LEACH, JR.,
BENJAMIN H. MCKINDLESS,
ASSISTANT CITY SOLICITORS.

Department of Law,

Henry M. Weeks, Clerk
Court House
Baltimore, Md.

EDWARD J. COLGAN, JR.
GENERAL ASSISTANT
GEORGE ARNOLD FRICK,
R. CONTEE ROSE,
SPECIAL ASSISTANTS.

IN REPLY REFER TO FILE NO. 22,084.

July 20th, 1918.

Frank Driscoll, Esq.,
Assistant City Solicitor.

Dear Sir:-

Please take up at once the question of locating witnesses who will testify to the following facts:

(1) That Bridge View was entirely covered by water at high water at the time of the patent, Aug. 28, 1907.

(2) That Mud Island was entirely covered by water at high water at the time of the patent, Nov. 17, 1913.

John N. Mackall, Chief Engineer of State Roads will testify that this Island was covered by water at high tide on the above date and since except for the growth of lot tails

(3) That Reed Bird Island was entirely covered by water at the time of the patent Sept. 10, 1909.

John N. Mackall, Chief Engineer of the State Roads will testify that the above Island was covered by water since 1909 and in 1913 he ^{went} ~~sailed~~ over the island in a boat,

I have left space for you to write the names of the witnesses and their addresses under each case. This is very important, so see what definite information and evidence you can get promptly.

SSF/VMcG.

Very truly yours, *[Signature]*
City Solicitor.

M E M O

In re

Bridge View Island, Mudd Island
and
Reed Bird Island.

John N. Macknall, Chief Engineer of the State Roads Commission, will testify that Mudd Island and Bridge View Island were covered by water at high tide at the time they were patented and since, except for the growth of cattails. He will further testify in reference to Reed Bird Island; that he rowed over what is now claimed as Reed Bird Island in a boat in 1913.

John A. Johnston, 38 E. Barney street, employed by the Harbor Board, was the keeper of Light Street Bridge for 19 years; is familiar with the Patapsco River as far up as the Annapolis Road, having been fishing and gunning around this section for over forty years; and he will testify that Bridge View Island, Mudd Island and Reed Bird Island were covered by water at high tide at the time they were patented and since.

M E M O

In re

Bridge View Island, Mud Island
and
Reed Bird Island.

* * * * *

Andrew Bruning, who hires boats and occupies part of Northeast Bridgeside, is familiar with the Patapsco River, having been born and raised and made his living along the Patapsco River for nearly fifty years. He will testify that Mud Island, Reed Bird Island and Bridge View Island have all been covered with water at high tide ever since they were patented and that at high tide at the present time, they are covered with water.

He is going to call me up at the next high tide so that I can see how the islands are covered with water and also how much of Reed Bird Island on either side of the fill is covered with water. Mr. Bruning says that the only thing that is above high tide are the cat-tails which grow in swampy places.

There are three large advertising signs on Reed Bird Island. Two of these are set up by the American Sign Company, and another one by Morton. Now, that Annexation has been upheld, this would bring this island into the City with the proceeds against the Sign Companies in an action of ejectment.

July 28, 1918

19.815.

June 24th, 1918.

Frank Gosnell, Esq.,
Maryland Trust Bldg.,
Baltimore, Md.

Dear Sir:-

In reference to Reed Bird Island, I beg to say that I have submitted your proposition for a compromise to the Harbor Board and they will not consent to anything as proposed. This is a matter which comes under their jurisdiction so that without their approval we cannot enter into a compromise which requires the building of a bulkhead or the making of any other improvements at this location.

Very truly yours,

F.D.
A. S.

Assistant City Solicitor.

S. S. FIELD,
CITY SOLICITOR.
ALEXANDER PRESTON,
DEPUTY CITY SOLICITOR
FRANK DRISCOLL,
ROBERT F. LEACH, JR.,
BENJAMIN H. MCKINDLESS,
ASSISTANT CITY SOLICITORS.

Department of Law,

Henry W. Weeks, Clerk
Court House
Baltimore, Md.

EDWARD J. DOLGAN, JR.
GENERAL ASSISTANT
GEORGE ARNOLD FRICK,
R. CONTEE ROSE,
SPECIAL ASSISTANTS.

IN REPLY REFER TO FILE NO. 19,815.

June 21st, 1918.

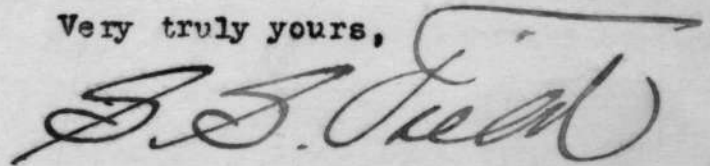
Frank Driscoll, Esq.,

Assistant City Solicitor.

Dear Sir:-

Replying to your letter of the 19th, in reference to Reed Bird Island, I could not agree to any compromise which would involve the building of a bulk-head without the consent of the Harbor Engineer. It costs money to build bulk-heads nowadays.

Very truly yours,



City Solicitor.

SSF/VMCG.

S. S. FIELD,
CITY SOLICITOR.
ALEXANDER PRESTON,
DEPUTY CITY SOLICITOR
FRANK DRISCOLL,
ROBERT F. LEACH, JR.,
BENJAMIN H. MCKINDLESS,
ASSISTANT CITY SOLICITORS.

Department of Law,

Henry W. Weeks, Clerk
Court House
Baltimore, Md.

EDWARD J. COLGAN, JR.
GENERAL ASSISTANT
GEORGE ARTHUR FRICK,
R. CONTEE ROSE,
SPECIAL ASSISTANTS.

IN REPLY REFER TO FILE NO. 19815

June 19th, 1918.

S. S. Field, Esq.,
City Solicitor.

Dear Sir:

I have been in communication for sometime with Frank Gosnell, Esq., in reference to compromising the suit filed in the Circuit Court for Anne Arundel County in Equity, setting aside the patent for Reed Bird Island.

I have suggested, by way of a compromise, that we would dismiss the proceedings in Anne Arundel County if Mr. Gosnell's client would deed all that part of Reed Bird Island lying northeast of the southwest side of the old Light Street Bridge. This seems to meet with his approval but, in addition, he suggested that the City build a bulkhead along the west side of the old Light Street Bridge and then dredge away the remaining land. I wrote to the Harbor Engineer in reference to this matter but he did not think it advisable for the City to do so at this time.

Were it not for the fact that, while the proceedings were pending, the State Roads Commission took a deed from the owners of Reed Bird Island we would have no difficulty in setting aside the patent but the fact that they have recognized the rights of the owners of the patent adds difficulty to our maintaining our bill. I, therefore, thought it would be advisable to compromise the suit as above suggested without

.S.F. #2.

providing the bulkhead. However, this does not meet with the approval of Mr. Gosnell. I, therefore, at his suggestion, am submitting the proposition to you, that is, as to whether or not we should build the bulkhead along the west side of the old Light Street Bridge and dredge away any of the land which remains above water.

Very truly yours,

F.D.
R.R.S.

Frank Dinsell
Assistant City Solicitor.

DEPARTMENT OF PUBLIC IMPROVEMENTS
SUB-DEPARTMENT: HARBOR BOARD
BALTIMORE, MD.

H. KENT MCCAY,
HARBOR ENGINEER
PRESIDENT
J. S. ARMIGER, SECRETARY
W. D. SANNER
W. G. KNAPP
CHARLES CLARK
JAMES H. IRVIN, CLERK



HARBOR BOARD
BROADWAY PIER

June
Sixth
Nineteen
Eighteen.

8

Mr. Frank Driscoll,
Assistant City Solicitor,
Court House, City.

Dear Sir:-

Referring to yours of the 4th inst., concerning the advisability of building a bulkhead at Reed Bird Island, on the line of the west side of the Old Light Street Draw Bridge, and dredging the land away.

Confirming our conference this morning, I do not think it advisable to spend any money in the improvements suggested, until a more definite plan has been determined upon, treated as an engineering problem. As a legal proposition, I do not care to make recommendations without further conference with you.

Respectfully,

William W. Carney
Acting Harbor Engineer.

WWV/BR.

1905
June 4th, 1918.

Mr. W. W. Varney,
Chief Engineer,
Harbor Board.

Dear Sir:-

I now have under consideration the question of settling the case in re Reed Bird Island. I should like to know whether the Harbor Board would consider the advisability of building a bulkhead at Reed Bird Island on the line of the western side of the old Light Street Bridge, dredging the land away.

Kindly let me have this information as soon as possible, and oblige

Very truly yours,

F.D.
R.R.S.

Assistant City Solicitor.

19815
May 21st, 1918.

ATTENTION OF MR. GOSNELL

Harbury, Gosnell & Williams,
Maryland Trust Bldg.,
Baltimore, Md.

Gentlemen:-

In reference to our recent conversation regarding Reed Bird Island, I can make you the following offer without prejudice and by way of a compromise:-

We will dismiss the suit now pending in the Circuit Court for Anne Arundel County to set aside the patent for Reed Bird Island if your client will agree to convey to the Mayor and City Council of Baltimore all that portion of said Island lying northeast of the southwestern side of the old Light Street Bridge.

Very truly yours,

F.D.
R.R.S.

Assistant City Solicitor.

WM. L. MARBURY
FRANK GOSNELL
GEO. WEEMS WILLIAMS
JESSE SLINGLUFF
WILLIAM L. RAWLS

LAW OFFICES
MARBURY, GOSNELL & WILLIAMS
MARYLAND TRUST BUILDING
CALVERT & GERMAN STREETS
BALTIMORE

19815
TELEPHONE ST. PAUL 2587

CABLE ADDRESS
"EMGE"

(2-W-8524)

May 21st, 1918.

Subject: REED BIRD ISLAND.

Hon. Frank Driscoll,
Assistant City Solicitor,
Court House, City.

Dear Sir:

We have your letter of the 21st inst., but we do not understand your proposition in view of the fact that in our recent conversation referred to by you it was suggested that a bulkhead be constructed alongside the line of the old Light Street Bridge nearest to the new state road, our suggestion being that the city pay for this bulkhead. This would give our clients the use of the water alongside of this bulkhead, the idea being that the land there now being in front thereof might or should be removed, and which would give the city certain riparian rights in front of the street, which runs to where the old bridge-head stood and which street you said the city owned under the new Annexation Act, and which riparian rights you were particularly and specifically desirous and anxious to secure for the city.

If this was the thought in your mind when you wrote your letter, Won't you kindly say so?

Of course, our correspondence is without prejudice and with the sole view, if possible, to reach a settlement by way of compromise of the pending litigation.

Very truly yours,

Marbury, Gosnell & Williams

19815.

Jan. 3rd, 1917.

Major Joseph W. Shirley,
Chief Engineer,

Topographical Survey Commission.

Dear Sir;

Please let me have a blueprint of the ground owned
by the City on the Anne Arundel county side of the Long or
Light Street Bridge. This was requested of you by Mr. Henderson.

Very truly yours,

F. D.
R.R.S.

Assistant City Solicitor.

B. HARRIS HENDERSON
ATTORNEY-AT-LAW
944 EQUITABLE BUILDING
BALTIMORE, MD.

December 14, 1916.

Mr. Frank Driscoll,
Asst. City Solicitor.

Dear Sir:-

In answer to your inquiry as to the ownership of the property acquired by the County Commissioners of Anne Arundel County and the Mayor and City Council from Richard O. Crisp, dated May 3, 1880 and recorded in F.A.P. No. 887 folio 369, I beg to report that the said County Commissioners ^{and City} still retain their interest in the afore-said property.

Very truly yours,

B. Harris Henderson

BHH-RB.

File

COMMISSION:

JAMES H. PRESTON, MAYOR
JAMES F. THRIFT, COMPTROLLER
RICHARD GWINN, REGISTER

JOSEPH W. SHIRLEY, C. E.,
CHIEF ENGINEER

R. N. HANNA,
ASSISTANT ENGINEER



TOPOGRAPHICAL SURVEY COMMISSION

December 14th, 1916.

Mr. Frank Driscoll,
Assistant City Solicitor.

Dear Sir:-

Replying to your favor of the 9th, file #19815, in which you request that we prepare for you a plat of the land owned by the City at the Anne Arundel County approach to the old Light street (or new Hanover street) Bridge, I beg to say that we are sending you herewith a blue print showing this property.

When our Mr. Mather called on you a few days ago and explained what the map we are sending you contained, you stated that you thought the map would serve your purpose.

Very truly yours,

A handwritten signature in dark ink, appearing to read "J. W. Shirley", is written over a horizontal line.

Chief Engineer.

JWS/O
encl.

COMMISSION

FRANK H. ZOUCK, C RMAN
G. CLINTON UHL
JOHN F. MUDD

STATE OF MARYLAND
STATE ROADS COMMISSION
GARRETT BUILDING
SOUTH AND GERMAN STREETS
BALTIMORE, MD.

1915
HENRY G. SHIRLEY,
CHIEF ENGINEER
JOHN E. GEORGE,
ASSISTANT TO CHAIRMAN
C. H. WILSON,
SECRETARY

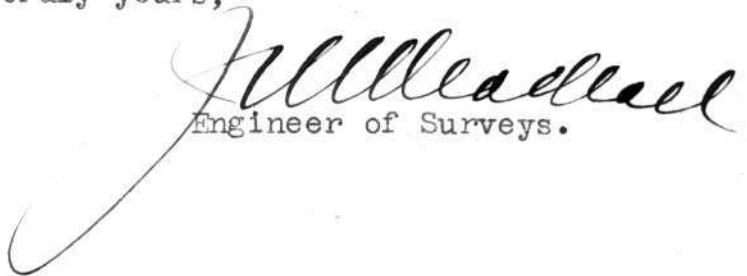
December 7th, 1916.

Frank Driscoll, Ass't. City Solicitor,
Court House, City.

Dear Sir:-

Replying to yours of the 6th instant, I regret to advise you that I have no information concerning the improvements which have been made on the city's land at Yokel Park by the owner of the park, and would refer you to Major Shirley for this information. He made the survey of the land owned by the city just about a year ago.

Very truly yours,


Engineer of Surveys.

JNM:HMR.

19815.

Dec. 9th, 1916.

Major Joseph W. Shirley,
Chief Engineer,

Topographical Survey Commission.

Dear Sir;

Will you kindly draw me a plat of the land owned by the City at the Anne Arundel county approach to the Light Street Bridge, showing what improvements, if any, have been put on the land by the owners of Yokel's Park. We are about to institute proceedings to acquire this land, which, I understand, has been fenced in by the owners of Yokel's Park. If such is the case, we are going to compel them to clear the land or pay the City rental for it.

Very truly yours,

F. D.
R.R.S.

Assistant City Solicitor.

Dec. 6th, 1916.

Mr. J. N. Mackell,
Engineer of Surveys,
State Roads Commission,
Garrett Bldg., City.

Dear Sir;

I am in receipt of your letter of Dec. 4th, notifying me that you have cleared the site for the pylons on the south end of the Hanover Street Bridge. If it is not too much trouble, would you kindly draw me a little sketch showing the character of the improvements made by the owners of Yokel's Park on the property belonging to the City.

Thanking you for past assistances in this matter,
I remain

Very truly yours,

F. D.
R.R.S.

Assistant City Solicitor.

COMMISSION
FRANK H. ZOUCK, CHAIRMAN
G. CLINTON UHL
JOHN F. MUDD



STATE OF MARYLAND
STATE ROADS COMMISSION
GARRETT BUILDING
BALTIMORE, MD.

HENRY G. SHIRLEY,
CHIEF ENGINEER
JOHN L. GEORGE,
ASST. TO CHAIRMAN
CLYDE H. WILSON
SECRETARY

December 4th, 1916.

Mr. Frank Driscoll, Asst. City Collicitor,
Court House, C i t y.

Dear Sir:-

I am in receipt of your letter of the 28th ultimo,
and am glad to advise you that we have cleared the site for
the pylons on the south end of the Hanover Street Bridge
at Brooklyn, and are at work on the construction of these.
We will be glad to give you any assistance we can in the matter
of securing the remainder of this land for the city.

Very truly yours,

J. B. Mackall
Engineer of Surveys.

JNM:JCF.

Nov. 28th, 1916.

Mr. J. N. Mackall,
Engineer of Surveys,
State Roads Commission,
Garrett Bldg., City.

Dear Sir;

I am in receipt of your letter of Nov. 26th,
enclosing blueprint. As soon as you have the land
cleared for the pylons please advise me as I am going
to take steps to get possession of all the property.

Very truly yours,

F. D.
R.R.S.

Assistant City Solicitor.

COMMISSION
FRANK H. ZOUCK, CHAIRMAN
G. CLINTON UHL
JOHN F. MUDD



STATE OF MARYLAND
STATE ROADS COMMISSION
GARRETT BUILDING
BALTIMORE, MD.

HENRY G. SHIRLEY
CHIEF ENGINEER
JOHN E. GEORGE,
ASST. TO CHAIRMAN
CLYDE H. WILSON
SECRETARY

November 26th, 1916.

Frank Driscoll, Assistant City Solicitor,
City Hall, City.

Dear Sir:-

Replying to yours of the 24th instant, I take pleasure in handing you herewith the blue print showing the land which the city owns at the foot of the Hanover Street bridge. The line within the red is now owned by the city and Anne Arundel County jointly, and the land enclosed in the green has been purchased in fee simple by the State and will be turned over to the city with the Hanover Street bridge.

Very truly yours,

Frank Driscoll
Engineer of Surveys.

JNM:HMR.

*We have what seems to
be a copy of this blue
print. AHA.*

COMMISSION
FRANK H. ZOUCK, CHAIRMAN
G CLINTON UHL
JOHN F. MUDD



STATE OF MARYLAND
STATE ROADS COMMISSION
GARRETT BUILDING
BALTIMORE, MD.

19815
HENRY G. SHIRLEY,
CHIEF ENGINEER
JOHN E. GEORGE,
ASST. TO CHAIRMAN
CLYDE H. WILSON
SECRETARY

November 23rd, 1916.

Frank Driscoll, Assistant City Solicitor,
City Hall, City.

Dear Sir:-

Confirming the conversation I had with you this morning, relative to the land which the city and Anne Arundel County own jointly on the south end of the Hanover Street bridge, beg to advise you that we will notify the man who is occupying this property that we intend to use a portion of it for the construction of the pylons and that he must remove his fences in order that we may do so, and if he does not comply with our request, we will remove the fences and construct the pylons in accordance with the plans.

Very truly yours,

J. H. Blackall
Engineer of Surveys.

JNM:HMR.

Nov. 24th, 1916.

Mr. J. N. Mackall,
Engineer of Surveys,
State Roads Commission,
Garrett Bldg., City.

Dear Sir;

I am in receipt of yours of Nov. 23rd, in reference to the land owned jointly by the City and Anne Arundel county on the south end of the Hanover Street Bridge. I note what you say about notifying the party occupying the property to remove his fences for the construction of the pylons and that if he does not comply with your request you will remove the fences and construct the pylons in accordance with the plans. This is in accordance with our conversation had yesterday.

I would ask you to kindly send me a tracing of this property, showing me just how much of our property is now being occupied by parties other than the State Roads Commission. I will then institute proceedings to get possession of all the property.

Very truly yours,

F. D.
R.R.S.

Assistant City Solicitor.

Copy by phone

COMMISSION

FRANK H. ZOUCK, CHAIRMAN
G. CLINTON UHL
JOHN F. MUDD



STATE OF MARYLAND
STATE ROADS COMMISSION
GARRETT BUILDING
BALTIMORE, MD.

19815

HENRY G. SHIRLEY,
CHIEF ENGINEER
JOHN E. GEORGE,
ASST. TO CHAIRMAN
CLYDE H. WILSON
SECRETARY

November 13, 1916.

Mr. Frank Driscoll,
Assistant City Solicitor,
Court House, City.

Dear Sir:

I have your letter of the 10th instant, relative to the survey to be made by the surveyor of Baltimore County. In reply thereto, I beg to advise you that I have been informed that this survey will not be made on the 14th. It has probably been postponed indefinitely. However, if we can be of any service to you in connection with this matter, kindly communicate with us, either by 'phone or letter.

Very truly yours,

F. H. Zouck
Chairman.

Z./S.

19,815.

July 12th, 1916.

Mr. F.H. Zouck,
Chairman, State Roads Commission,
Garrett Building,
City.

Dear Sir:-

I am in receipt of yours of July 11th, and thank you for the expression contained in that letter that the Commission will co-operate with the City in all undertakings in which the City and the State Roads Commission are jointly interested. I also note what you say in reference to Reed Bird Island, but on April 11th, 1916, I received a letter from Mr. Henry G. Shirley, Chief Engineer of the Commission, in which letter he told me that the State Roads Commission had no formal agreement with Wagner in reference to Reed Bird Island, and that as soon as a formal agreement was completed he would gladly let me have a copy of the same. I waited expecting to receive a copy of this agreement before it was signed, but my first knowledge that any agreement had been formally executed was when I received the Answer to our Bill in Equity, wherein the counsel for Wagner stated that the State Roads Commission had accepted a deed dated May 5th, 1916, accepting a right of way through Reed Bird Island. You will notice that the deed is dated nearly a month after the letter from Mr. Shirley.

I cannot help in this connection but reiterate what

F.H.Z., #2.

I stated in my letter, and that is that an examination of the title would have disclosed the fact that the City was contesting Wagner's claim to Reed Bird Island, and no deed or agreement should have been accepted without an examination of the records.

As this is a matter of past history, I feel that in the future the State Roads Commission will co-operate with the City in reference to any matter in which they are jointly interested. This was not done in the case of South West Bridge Side and North East Bridge Side, nor as I can see in any question that the City was contesting the right of the State to grant patents for certain lands in the vicinity of Hanover street bridge.

Thanking you for the assurance of assistance in the future, I am,

Yours very truly,

F. D.
V. McG.

Assistant City Solicitor.

COMMISSION
FRANK H. ZOUCK, CHAIRMAN
G. CLINTON UHL
JOHN F. MUDD

19815-
STATE OF MARYLAND
STATE ROADS COMMISSION
GARRETT BUILDING
SOUTH AND GERMAN STREETS
BALTIMORE, MD.

HENRY G. SHIRLEY,
CHIEF ENGINEER
JOHN E. GEORGE,
ASSISTANT TO CHAIRMAN

July 11, 1916.

Mr. Frank Driscoll,
Assistant City Solicitor,
Court House, City.

Dear Sir:

I beg to acknowledge receipt of your letter of the 6th instant, relative to the construction of the Hanover Street Bridge and its approaches, especially over the Main Branch of the Patapsco River. I have carefully noted what you have to say in connection therewith.

In regard to Reed Bird Island, I wish to state that the State Roads Commission had no way of knowing that at some future time the City was going to take action against the parties claiming this island, and I believe that it was the duty of the City to notify this Commission, as you had knowledge of the fact that we were going to build this bridge. When we had to secure the right-of-way through Reed Bird Island, we naturally looked up the owner, and found that the only one on record was Mr. Wagner. We naturally dealt with him, especially when he gave us the right-of-way free of charge.

I assure you that it is the desire of this Commission to co-operate with the City in all undertakings in which the City and the State Roads Commission are jointly interested, but I am sure that you will agree with me that the City should notify us of any plans they have in connection therewith.

Very truly yours,

F. H. Zouck
Chairman.

Z./S.

File in Real Estate Dept

COMMISSION
GOVERNOR E. C. HIGTON
FRANK H. ZOUCK, CHAIRMAN
W. B. MILLER
ANDREW RAMSAY
THOMAS PARRAN
JOHN M. PERRY
J. FRANK SMITH

STATE OF MARYLAND
STATE ROADS COMMISSION
GARRETT BUILDING
SOUTH AND GERMAN STREETS
BALTIMORE, MD.

19815
HENRY G. SHURLEY,
CHIEF ENGINEER
WM. L. MARCY,
SECRETARY
LEON E. GREENBAUM,
COUNSEL

23rd June,

1916.

Frank Driscoll, Asst. City Solicitor,
Department of Law, Court House,
Baltimore, Maryland.

Dear Sir:

Your letter of the 20th inst., relative to the deed, etc.,
given by a certain Harry M. Wagner, et al, received, and I am
enclosing herewith, copy of the deed we have relative to the
right of way across the Patapsco.

Very truly yours,

H. G. Shurley
Chief Engineer.

HGS:HEL.

19,815.

June 20th, 1916.

H.G. Shirley, Esq.,
Chief Engineer,
State Roads Commission,
Garrett Building, City.

Dear Sir:-

I have just received a copy of the Answer of Harry M. Wagner, et al. to the Bill filed by the Mayor and City Council of Baltimore against them, which Bill was filed by the City for the purpose of setting aside the patent for Reed Bird Island.

I was very much surprised to find in the Answer that by deed dated May 5th, 1916, and recorded among the Land Records of Baltimore County, the State Roads Commission had accepted a right of way (from Harry M. Wagner) over Reed Bird Island sixty-six feet wide, when your letter to me of April 11th advised me that you had no formal agreement with Wagner, the alleged owner of Reed Bird Island, but that you had one in process of completion and would let me have a copy of the same as soon as it was completed. I have been waiting to see that formal agreement and thought that before any agreement or a deed would be executed you would advise me of the contents before accepting it, in view of the fact that the City claims ownership

H.G.S., #2.

to Reed Bird Island, and has filed a Bill in the Circuit Court for Anne Arundel County to have the patent for said Island set aside, on the ground that the same belongs to the Mayor and City Council of Baltimore.

If the title had been searched by any one connected with the Commission this fact would have been brought to your attention, as the matter was one of record in the Circuit Court for Anne Arundel County.

I would ask you to kindly send me a copy of the deed, if you have one in your possession.

I wish to advise you that we are also contesting an application for a patent for two parcels of land, one on the northeast side and the other on the southwest side of Hanover Street Bridge, at a point between Reed Bird Island and Baltimore County, and, in the course of the argument before the Land Commissioner, I was advised that the State Roads Commission were making negotiations with Mr. Kline for an additional piece of land, in order to make the roadway leading to the bridge wider than was at first granted. If such is the intention of the Commission, I wish to inform you not to negotiate with any one or recognize anybody's rights in those two parcels of land which are so-called northeast bridge side and southwest bridge side, as we claim them as part of the Hanover Street Bridge, which, after your Commission has completed it, will become the property of the Mayor and City Council of Baltimore. I call your attention to this so that you will know exactly the

H.G.S., #3.

City's position in reference to these two parcels of land, as well as the State's right to use and occupy the same without permission from any one.

I will thank you to let me have a copy of the deed granting the State the right of way over Reed Bird Island and any circumstances connected with its acceptance by the State Roads Commission, which would assist us in the trial of the case.

Yours very truly,

F. D.
V.McG.

Assistant City Solicitor.

WM. L. MARBURY
FRANK GOSNELL
GEO. WEEMS WILLIAMS
JESSE SLINGLUFF
WILLIAM L. RAWLS

LAW OFFICES
MARBURY, GOSNELL & WILLIAMS
MARYLAND TRUST BUILDING
CALVERT & GERMAN STREETS
BALTIMORE

TELEPHONE ST. PAUL 2587

CABLE ADDRESS
"EMGE"

2-H-8524.

June 12th, 1916.

Subject: M. & C.C. OF BALTO. v. BRUNS & WAGNER.

Hon. Frank Driscoll,
Assistant City Solicitor,
City Hall, City.

Dear Judge:-

Inclosed please find copy of our answer to the Supplemental or Amended Bill of Complaint in the above entitled cause, which we are sending to Annapolis tomorrow to be filed. Although you were kind enough to say that we could have all the time we desired for filing this answer, you will observe that we are within the thirty-five days, which we had under the rules of court, to appear and answer.

Very truly yours,

Inclosure.

Frank Gosnell

STATE ROADS COMMISSION

Recorded GWT-5-202
May 12-1916.

THIS DEED made this fifth day of May, nineteen hundred and sixteen, by and between Harry M. Wagner and Harriet Cleveland Wagner, his wife, of Baltimore City, in the State of Maryland, of the first part and the State of Maryland, of the second part.

WITNESSETH that in consideration of the sum of One Dollar to them paid and of other valuable considerations, the said parties of the first part do hereby grant and convey unto the said party of the second part, its successors and assigns, a right of way for the purpose of a street or highway over and across that part of the tract of land situate in Anne Arundel County, in the State of Maryland and constituting an island in the Patapsco River known as "Reed Bird Island", which is thus described, to wit:

BEGINNING for the same at a point on the line of the face of the north abutment of the first State Bridge crossing the Patapsco River, northwest of the town of Brooklyn in Anne Arundel County, distant thirty-three feet easterly from the center line of said bridge, running thence northwesterly fifteen hundred sixty-one and five-tenths feet, more or less, to a point in the line of the face of the south abutment of the second bridge crossing the Patapsco River, northwest of the town of Brooklyn in Anne Arundel County, distant thirty-three feet from the center line of said last mentioned bridge, thence along the line of the face of said last mentioned abutment southwest sixty-six feet, more or less, to intersect a line drawn parallel to the line secondly mentioned in the aforesaid description, thence reversing said last mentioned line and running thereon southeasterly fifteen hundred sixty-one and five-tenths feet to intersect the line of the face of the abutment first above mentioned, thence southeasterly

STATE ROADS COMMISSION

#2.

along the line of the face of said abutment thirty-three feet to the place of beginning.

BEING a part of the tract of land which by deed dated the 23rd day of September, A. D., 1910, and duly recorded among the land records of Anne Arundel County in Liber G. W. No. 83, folio 184, etc., was conveyed by _____ to the said Harry M. Wagner.

TOGETHER with the right to build and at all times to repair and maintain said street or highway within the bounds of said right of way and the necessary slopes on each side thereof; said Harry M. Wagner, however, reserving to himself the fee and reversion in said land, subject to the easement hereby granted and the right of access to the said State Road on each side thereof from his land by roadways which he may hereafter construct connecting with said right of way when and as such roadways are brought up to the grade of said highway and the privilege of unloading material from said state road upon his said land for grading upon the same.

IN CONSIDERATION of the premises and of One Dollar to it paid, the said party of the second part doth hereby covenant and agree that the rights hereinbefore reserved by said Harry M. Wagner, shall be at all times available.

WITNESS the hands and seals of the parties of the first part and the seal of the party of the second part duly attested by its proper officers.

TEST!

Sg'd. J. A. Hilleary, Jr.

Sg'd. Harry M. Wagner (SEAL)

ATTEST:
Sg'd. Wm. L. Marcy

"Harriet Cleveland Wagner (SEAL)

STATE ROADS COMMISSION

Sg'd. F. H. Zouck
Chairman.

STATE ROADS COMMISSION

#3.

STATE OF MARYLAND)
BALTIMORE CITY) TO WIT:

I hereby certify that on this fifth day of May, in the year nineteen hundred and sixteen, before me, the subscriber, a Notary Public of the State and City aforesaid, personally appeared Harry M. Wagner and Harriet Cleveland Wagner, his wife and acknowledged the foregoing deed to be their respective deed and act.

WITNESS my hand and notarial seal.

(Sg'd.) J. A. Hilleary, Jr.,
Notary Public.

O. K. as to description:

Sg'd. J. N. Mackall

Approved as to legal sufficiency:

Sg'd. Leon E. Greenbaum
Counsel to State Roads Commission.

WM.L.MARBURY
FRANK GOSNELL
GEO.WEEMS WILLIAMS
JESSE SLINGLUFF
WILLIAM L.RAWLS

LAW OFFICES
MARBURY, GOSNELL & WILLIAMS
MARYLAND TRUST BUILDING
CALVERT & GERMAN STREETS
BALTIMORE

TELEPHONE ST. PAUL 2587

CABLE ADDRESS
"EMGE"

2-H-

May 9th, 1916.

Subject: M. & C.C. OF BALTO. v. BRUNS & WAGNER.

Hon. Frank Driscoll,
Court House,
City.

Dear Judge:-

I have accepted service of the Amended Bill of Complaint in the above case, and am inclosing the same to you herewith, the understanding being that we are to have all the time we desire in which to file our answer.

I am also returning to you, with thanks, your Exhibit C, which you loaned me for the purpose of making a copy.

Very truly yours,

Frank Gosnell

ENC. 2.

COMMISSION
GOVERNOR P. L. GO'BOROUGH
O. E. WELLER, CHAIR
W. B. MILLER
ANDREW RAMSAY
THOMAS PARRAN
JOHN M. PERRY
J. FRANK SMITH

19815
STATE OF MARYLAND
STATE ROADS COMMISSION
GARRETT BUILDING
SOUTH AND GERMAN STREETS
BALTIMORE, MD.

F. H. ZOUCH
ASSTANT TO CHAIRMAN
HENRY G. S. LEY,
CHIEF ENGINEER
WM. L. MARCY,
SECRETARY
LEON E. GREENEBAUM,
COUNSEL


April 11th, 1916.

Mr. Frank Driscoll,
Assistant City Solicitor,
Court House, City.

Dear Sir:-

In accordance with your request I am handing you herewith the agreement which we have with G. W. Klein for the right of way through his property and the deed from August Wienhold and the South Baltimore Harbor and Improvement Company for the right of way we secured from them at the Brooklyn end of the Hanover Street bridge. We have no formal agreement with Wagner, who owns Reed Bird Island in the bed of the Patapsco River, but we have one in the process of completion at this time. The substance of the agreement is that he permits us to go through his property, known as Reed Bird Island, with the fill for the approach to the Hanover Street bridge, and in return we guarantee to give him the right to open the streets at right angles to Hanover Street when he begins to develop his property. As soon as the formal agreement is completed, I will be glad to let you have a copy.

Very truly yours,


Chief Engineer.

JNM:HMR.

S. S. FIELD,
CITY SOLICITOR
ALEXANDER PRESTON,
DEPUTY CITY SOLICITOR.

Department of Law,

Henry W. Weeks, Clerk
Court House
Baltimore, Md.

FRANK DRISCOLL,
ROBERT F. LEACH, JR.,
BENJAMIN H. WICKINDLESS,
ASSISTANT CITY SOLICITORS.

IN REPLY REFER TO FILE NO

19815

March 13, 1916.

Frank Driscoll, Esq.,

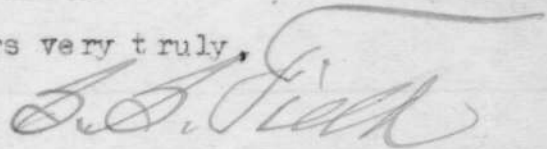
Assistant City Solicitor.

Dear Sir:

I am handing you herewith an opinion of Mr. George Washington Williams, who agrees with you that you should go ahead with the proceedings to have the patent to Reed Bird Island annulled.

I will, therefore, rely on you to proceed with that case, and also with the ejectment case.

Yours very truly,



City Solicitor.

S.S.F.
K.H.D.
(Enc.)

S. S. FIELD,
CITY SOLICITOR,
ALEXANDER PRITCHARD,
DEPUTY CITY SOLICITOR.

Department of Law,

Henry W. Weeks, Clerk

Court House

Baltimore, Md.

March 10th, 1916.

FRANCIS DRISCOLL,
ROBERT F. L. H. JR.,
BENJAMIN H. MCKINDLESS,
ASSISTANT CITY SOLICITORS.

IN REPLY REFER TO FILE NO. 19,815.

Hon. S. S. Field,
City Solicitor.

Dear Sir:-

In the matter of Reed Bird Island, the question is, whether or not it would be expedient to immediately institute proceedings looking to the establishment of the right of Baltimore City to said Island, or to delay the matter until some future time, or until Mr. J. P. Bruns takes the initiative. A Bill in Equity has been prepared preparatory to immediate action.

The patent is predicated upon the fact that there is new land formed by alluvion or accretion in the Patapsco River within the boundaries prescribed in the patent, and that no individual or corporation has any title thereto by either a patent, mesne conveyance, or as a riparian owner.

The title of the parties who claim this land, viz., Bruns, who claims by patent, and the City of Baltimore, who claims as a riparian owner, can be determined at law by ejectment proceedings, but the question of whether or not the patent was obtained by misrepresentation or fraud, upon the state, can be determined only in a Court of Equity.

The case of Linthicum vs. Coan, 64 Md. 439, was an action in ejectment. It involved the title of the same character of new land, and was located in the same general section as the land now in question.

S.S.F.(2)

In Cook vs. Carroll, 6 Md., 104, 112, 113, an action at law, the court held it error to permit,

"testimony to be adduced for the purpose of showing fraud in the obtention of the patent. If there was any fraud or misrepresentation in causing its issue, it could only be inquired into by the tribunal that issued it, or by a Court of Equity".

There is some question in my mind as to whether or not an equitable action can be maintained, because the matter in dispute is the title to this new land, and the method of determining matters of title is by an action of ejectment. However, if this bill be considered a bill quia timet, of course, equity has jurisdiction. In order to maintain a bill quia timet, one must have,

"a clear, legal and equitable title to land, connected with possession."

Miller's Equity section 716.

Baltimore City claims a clear legal title by reason of its rights as riparian owner, and has, at least, the constructive possession of the land, which is a sufficient possession.

Baumgardner vs. Fowler, 82 Md. 631, 641.

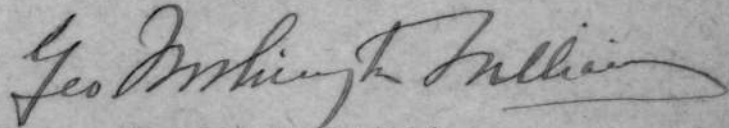
I can see nothing that can be accomplished by a delay in meeting the issue involved in the premises. It would be more advantageous to go into equity than to proceed by a suit in ejectment, and as Mr. Bruns might, at any time, go in and take an actual physical possession of this land, and thereby oust the City of its constructive possession, and thereby

S.S.F.(3)

defeat an equitable action, the matter might be proceeded with at the present with no disadvantage to the City. Of course, I am aware of the advantage that a defendant usually has in a suit in ejectment; the plaintiff must recover on the strength of his own title and not on the weakness of the title of the defendant. But by reason of having a patent, Mr. Bruns would have no difficulty in making out a prima facie case, and then by the lapse of the usual time a prescriptive right might supplement the patent right, and raise an additional difficulty.

My conclusion in the matter, therefore, is that a present action would not be disadvantageous to the City.

Yours very truly,

A handwritten signature in cursive script, reading "Geo Washington Sullivan". The signature is written in dark ink and is positioned above the typed name "Special Assistant.".

Special Assistant.

G.W.W.
F.M.C.

S. S. FIELD,
CITY SOLICITOR
ALEXANDER PRESTON,
DEPUTY CITY SOLICITOR.

Department of Law,

Henry W. Weeks, Clerk
Court House
Baltimore, Md.

FRANK DRISCOLL,
ROBERT F. LEWIS, JR.,
BENJAMIN H. W. KINDLESS,
ASSISTANT CITY SOLICITORS.

IN REPLY REFER TO FILE NO. 19,815.

February 28th, 1916.

Hon. S.S. Field,
City Solicitor.

Dear Sir:-

In reply to yours of December 13th, 1915, I beg to say that it appears from the papers in this file that a patent has been issued to John P. Bruns for Reed Bird Island.

The question presented to me for an opinion is whether it is advisable for the City to institute proceedings to have this patent declared void. Mr. Driscoll has prepared a Bill praying the Circuit Court for Anne Arundel County to vacate this patent and issuing a Writ of Scire Facias for this purpose. So far as the form of proceedings is concerned, I fully agree with Mr. Driscoll that this is the proper procedure to follow, but it does not seem to me to be advisable for the City to institute proceedings at this time, if at all.

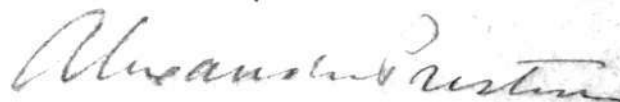
The so-called Reed Bird Island is little more than a patch of mud, lying under the Patapsco River over which the tide ebbs and flows. There is no fast land covered by this patent, and, in my opinion, whatever rights there may be in this so-called island, they have been vested in the City prior to the issuance of the patent. The chief interest of the City in this connection is the building of the Light Street Bridge,

Hon.S.S.F., #2.

which goes through the centre of the so-called island. Mr. Driscoll tells me that when the bridge is completed that the land, such as it is, will, in all probability, be washed away.

It seems to me, therefore, that any question which might arise in the future would be in regard to any accretions which might form into solid ground around the piers and structure of the bridge. In my opinion, it would be better to wait for the patentee to bring a suit, either for trespass or ejectment, against the City rather than institute proceedings for the City against the patentee. As this is, or may be, a very important question, I would suggest that no action be taken in any circumstances until the completion of the new bridge, and the question of the institution of the suit should then be re-considered.

Very truly yours,



Deputy City Solicitor.

A. P.
V.McG.

MEMORANDUM FOR MR. J. J. SANTRY
IN REFERENCE TO LIGHT STREET BRIDGE.

✓ See the keeper of Light Street Bridge, whose name is Mr. Johnson and find out from him what is his recollection of the condition of the flats on the Anne Arundel County side of the Light Street Bridge from 1908 to the present time; ✓ also how long he has been keeper of the bridge; ✓ if the flats are covered with water at high tide, ✓ how many times that occurs in a year, and how far his recollection extends to the time when there was no land visible under that portion of the bridge at either high or low tide; ✓ also find out from him what he knows about that shanty at the Baltimore City end of the Light Street Bridge; ✓ how long that shanty has been there; also if he knows anything about the change of the location of the present bridge from the old bridge near the present bridge as built in 1890 ✓ and get any information that you can from him in respect to Light Street Bridge as to anyone occupying the abutments and how long they have been there; ✓ also what he knows about the abutments to the old draw bridge and any other general information that would be of assistance to the City; ✓ how long the City has maintained the bridge, ✓ how long it has lighted it and policed it and particularly the condition now of the land under the Anne Arundel County end of the Light Street Bridge ✓ and request him, as this will likely be used in the trial of the case, ✓ to note from now on the general condition surrounding that abutment, ✓ that is, if the land is adjoining the main land and whether the tide flows or re-flows under that part of the ✓ Light Street Bridge and find out whether it is possible for a person to walk across what is known as Reed Bird Island.

Baltimore, Md., April 13, 1916.

Frank Driscoll, Esq.,

Assistant City Solicitor.

Dear Sir:-

I have interviewed Mr. John A. Johnston, the keeper of the Light Street Bridge and he gave me the following information:

Since 1908 the flats on the Anne Arundel County side were covered at high tide, but at very low tide they would not be covered, that is they haven't been for the last ten years.

Mr. Johnston has been keeper of the Bridge for 16 years to the 15th day of April, 1916.

The flats are all covered at high tide.

As the moon and the wind necessarily control the tides, it is impossible for Mr. Johnston to say just when, and how often, these flats were covered by water, but he said that the south and southeasterly winds would cover the flats or cause high tide and also full moon or very strong easterly wind, at new moon.

The old bridge, which was built originally by individuals and subsequently taken over by the Anne Arundel County officials and Baltimore City was 20 feet in width and in 1890, after the City had acquired the sole ownership of this Bridge they widened it to a width of 30 feet, using the old piles their entire width and adding 10 extra feet of new pile towards the west, and raising the Bridge its entire length 12 feet in height (making the additional feet west of the original Bridge).

No one occupies the abutments, except the City employees, i.e. the keeper and the night bridge tender.

Mr. Johnston, I understand, is the only man who receives pay for this work, as the night bridge tender does his work in exchange for being able to occupy the little house on one of these abutments.

The old abutments since the erection of this new Bridge

have ceased to be of any use and are gradually being washed away.

Up to about 10 years ago the flats west of the Bridge were always covered by water, except in very low tide, which only happened in northwest winds, in March and April. The east side of the flats for the last 15 years, near the Anne Arundel abutment, was visible at low tide, for just a small portion thereof.

The City has had this Bridge in its sole ownership for the last 30 some years and first used kerosene oil to light with, but electric power has been used for the last 20 years.

Up until about 20 years ago there was a special police officer of the City of Baltimore stationed on this Bridge. Since this time the officers in the immediate neighborhood take care of the Bridge along with other neighborhood property.

The land under the Bridge on the Anne Arundel County side is now visible at times (according to the tide, as above outlined).

There is a channel which runs between Reed Bird Island and the mainland of Anne Arundel County, which at times is from one to five feet, according to the tide, but at very low tide it may generally be said that this swamp land of Reed Bird Island connects directly with the shores of Anne Arundel County. For general purposes it may be said that Reed Bird Island is not such land as may be used as a highway for pedestrians, but that part of Reed Bird Island which now has the new Hanover Street Bridge built upon it may, of course, be used as a highway.

I also interviewed Henry Lutz, who is a City employee, employed by the Harbor Board, who gave me no additional information, but substantiated generally what Mr. Johnston had said.

I also interviewed Mr. Andrew Bruning, Ferry Bar, City - he informed me that the shanty which he occupies is in Baltimore County; that he pays Mr. Kahl his rent for the same; that it has been there for the last 30 years and that the City's property stops just a short distance northwest of the shanty; he also informed me that he has been told that this property is now owned by the Western Maryland Railway Company.

Mr. Bruning appears to be a man about 50 years of age and has spent a greater portion of his lifetime around this immediate neighborhood, and should the City want some one to testify as to the condition of the flats, for the past 30 years, I believe Mr. Bruning would be the best authority on the subject.

To test Mr. Bruning's ability, I asked him whether he thought a person could make use of the flats and he promptly informed me that for purposes of navigation in making use of property of this kind, the controlling factor was to determine what was the condition of the land at high tide and not at low tide, and if the land is covered with water, at high tide, he has always been lead to believe that no one owned them, except either abutting owners or the City, or the Federal Government.

Should you desire any further information, please advise me.

Very truly yours,

Jerre J. Stantry

J.J.S.
J.McN.

S. S. FIELD,
CITY SOLICITOR
ALEXANDER PRESTON,
DEPUTY CITY SOLICITOR.

Department of Law,

Henry W. Weeks, Clerk
Court House
Baltimore, Md.

FRANK DRISCOLL,
ROBERT F. LEWIS, JR.,
BENJAMIN H. WICKINDLESS,
ASSISTANT CITY SOLICITORS.

IN REPLY REFER TO FILE NO. 19815

December 13, 1915.

Alexander Preston, Esq.,
Deputy City Solicitor.

Dear Sir:

Please go carefully through the papers in the above file, including a memorandum prepared by Mr. Driscoll, and see if you approve the proceeding he suggests to vacate the patent to Reed Bird Island.

This land is very valuable, and we want to assert the city's rights to it, if we have rights, and want to take the proper steps, so I am asking you to review the matter and see whether or not you agree with Mr. Driscoll's conclusions, and oblige

Yours very truly,



City Solicitor.

S.S.F.
K.H.D.

DE P-

December 22, 1911.

O. F. Lackey, Esq.,

Harbor Engineer.

Dear Sir:

I send you herewith the patent granted to John P. Bruns for Reed Bird Island in the Patapsco river, or rather a plat and memorandum as to the patent - which it really is- which the Mayor sent me this morning, with the request that it be returned to you.

I have taken a copy for my file.

Very truly yours,

S.S.F.
K.H.W.

City Solicitor.

(Enc.)



JAMES H. PRESTON
MAYOR.

Mayor's Office,

13660

File in Light St Bridge
BALTIMORE, MD.,
December 20, 1911.

HON. S. S. FIELD,
City Solicitor,
Courthouse, City.

Dear Mr. Field:-

I enclose you herewith patent granted
to John P. Bruns for "Reed Bird Island" in the Patap-
sco.

Please return this to Mr. Lackey when you
have finished with it.

Yours very truly,

James H. Preston
Mayor.

JHP(K).

Enc.

LAW OFFICES
MARBURY, GOSNELL & WILLIAMS

WM. L. MARBURY
FRANK GOSNELL
GEO. WEEMS WILLIAMS
JESSE SLINGLUFF
WILLIAM L. RAWLS
L. VERNON MILLER

MARYLAND TRUST BUILDING
CALVERT & REDWOOD STREETS
BALTIMORE

TELEPHONE PLAZA 2587

CABLE ADDRESS
"EMGE"

WASHINGTON OFFICE
WILKINS BUILDING
1512 H ST. N.W.

2-W-10621-4

March 12th, 1923.

Department of Law,
Mr. Horton S. Smith,
Assistant City Solicitor,
Court House, City.

Dear Mr. Smith,

I have your letter of the 12th inst. and note that you say that in the six pending proceedings therein referred to no part of Reed Bird Island is sought to be condemned, accordingly our clients Mr. and Mrs. Wagner waive any interest they may have in the lands, &c. sought to be condemned in those cases, as the same lie on the north side of the Patapsco River to the center thereof.

Very truly yours,

Frank Gosnell

Attorney for Harry M. Wagner & wife

CITY SOLICITOR'S OFFICE

March 12th, 1923.

Mr. Frank Gosnell,
Maryland Trust Building,
City.

Dear Mr. Gosnell:-

Following our conversation at the time of the call of the case of Ambrose Laukitis before Judge Frank on last Monday with special reference to the condemnation of the riparian rights of the Laukitis lots in the Patapsco River, let me say:

Six suits have been filed for the condemnation of the riparian rights on the northwest side of the Patapsco River extending from the shore line to the centre of the channel as marked on the plat, a copy of which has been delivered to you. In this proceeding no part of Reed Bird Island is sought to be condemned. Your clients, Mr. and Mrs. Wagner were made parties in order to obtain any riparian rights to Reed Bird Island, which might lie within the area I have above described.

The purport of our conversation was that Mr. and Mrs. Wagner made no claim to any riparian rights northwest of the centre line of the channel as laid down on the plat, a copy of which you have, and that if the City would assure you that no part of the Reed Bird Island was intended to be condemned that you would state that the Wagners had no

CITY SOLICITOR'S OFFICE

interest in the property laid out in said plat to be condemned. That upon receipt of such a statement from you the Wagners would be dismissed as defendants in the proceedings now pending.

If this statement correctly sets forth our agreement, kindly confirm it by letter and I will dismiss this proceeding in open Court as to Mr. and Mrs. Wagner. The same agreement made in the Laucitis case will extend to the cases of Narenski, Sanford, Hedges, the Maison Amusement Company and Myerland and Marchant, Trustees, these being all of the cases on the northwest side of the Patapsco River from the Hanover Street Bridge to the Curtis Bay Branch of the Baltimore and Ohio Railroad.

COPY

Very truly yours,

Assistant City Solicitor.

HSS/AA.

CITY SOLICITOR'S OFFICE

220.31
January
Tenth
1923

Mr. Frank Gosnell,
Maryland Trust Building,
Baltimore, Maryland.

Dear Sir:-

COPY
Following up your request of
Mr. Marchant, for a copy of the plat on the Mud Island
litigation, desire to say that we are sending you a blue
print of the tracing of the Department of Public Improve-
ments Topographical Survey Commission.

This plat is sent to you with
the distinct understanding that the City does not, by
sending it, bind itself by any of the distances or courses
thereon. It is sent to you as containing the information
now in possession of the City as to distances and locations
but is subject to corrections as the legal effect of locations
or distances may be subsequently found or determined and shall
in no manner raise an estoppel against the City in any liti-
gation or subsequent negotiations concerning anything
connected with the development of the Harbor of Baltimore

CITY SOLICITOR'S OFFICE

Mr. Gosnell

-2-

1/10/23

or the ownership or title to any land or Island disclosed
thereon

Very truly yours,

Assistant Solicitor.

COPY

HSS/h



A PREVIEW OF THE PROPOSED PATAPSCO RIVER VALLEY PARKWAY
TO SERVE THE RECREATIONAL NEEDS OF THE STATE'S
INDUSTRIAL POPULATION

Acquisition and development of desirable recreational areas and facilities for the State's industrial population have been the subject of numerous studies in years past. In 1946 the Patapsco River Valley Commission, appointed by the Mayor of Baltimore City, promulgated a long-range plan for extending the recreational facilities of the Patapsco State Forest to meet the needs of the industrial area surrounding Baltimore, including parts of Anne Arundel, Baltimore, Carroll, and Howard counties. With civic, city, county, and state leaders serving on the Commission, a plan was drawn up for a 15,000-acre State park and 35 miles of scenic parkway along the Patapsco River. The ultimate development of the Parkway will include Liberty Reservoir on the north branch of the Patapsco, as pictured on the map on the other side of this sheet.

To supplement the limited facilities of the existing State park above Relay, it is proposed that 295 acres be purchased immediately in the Lower Patapsco Valley, that 400 acres of mud flats adjoining Baltimore City be filled in and converted to recreational uses, and that a by-pass parkway link around Ellicott City be constructed. Cost of the acquisitions recommended would amount to \$1,002,000. Ultimately it is proposed that the State acquire 1,194 acres in the Valley over a period of 15 years, plus 3,850 acres adjacent to the State Forest Reserve. The Lower Valley contains many scenic areas extremely adaptable for park and recreational purposes. The River, bordered by willows and sycamores, provides a variety of interesting vistas as it winds through the near-by fields. Existing stream pollution can be cleared up and further detriment to the River prevented by the type of development proposed.

Acting on the recommendations of the Patapsco River Valley Commission, the Department of Recreation and Parks of Baltimore City has recently acquired a park site in the Brooklyn area. Located west of the proposed Potee Street extension and south of Reedbird Avenue, the park will offer the urban-type recreational facilities required by the rapidly growing Cherry Hill section. Through this development, one of Baltimore's eyesores will be transformed into an attractive and useful landscaped area.

The Patapsco State Park, under the supervision of the Department of State Forests and Parks, will provide a variety of popular recreational activities, including golf, horseback riding, picnic groves, swimming, boating, canoeing, and fishing. Through planning of a regional system of valley parkways, it will be possible to link the Patapsco River Valley Parkway with the upper Loch Raven section. The park will offer to one and a quarter million people in the State opportunities for recreation and relaxation not now available in the Greater Baltimore Area. Copies of the study and recommendations of the Patapsco River Valley Commission are available in limited numbers at the Maryland State Planning Commission, 100 Equitable Building, Baltimore, 2, Maryland.

March 1949.

Mud Island

rights
private
27866

The nature and extent of the rights of riparian owners is to be determined by the courts of the State as a matter of local law, subject to the right of Congress to regulate public navigation and commerce.

St. Anthony Falls Water Co. vs. Water Com'rs.,
168 U.S. 349, S. Ct. 157, 42 L. Ed. 497,
Shirley vs. Boylby, 152 U.S. 137.

In Maryland the rights of riparian proprietors were the same as in England, until those rights were materially changed and considerably enlarged by the Act of 1862, Ch. 129.

(1) What were those rights?

The common law makes a clear distinction between navigable and unnavigable waters, differing in this respect from the Roman Law, although the whole law appertaining to riparian rights was taken by the expounders of the common law from the Roman Law. According to the Roman Law the bed of the river becomes publicus by the mere fact of the river flowing over it. If any portion of the bed is dried so as to form an island, it ceases to be public, and becoming private, is presumed to be a part of the adjacent land.

It is something not newly acquired, but restored to us by nature; we have been temporarily deprived of it and again resume our rights over it.

Sec. 20, Liber 2, Tit. 1.,
Institutes of Justinian by Sanders, folio 167.

Moreover the alluvial soil added by a river to your land becomes yours by the law of nations. Alluvion is an imperceptible increase; and that is added by alluvion, which is added so gradually that no one can perceive how much is added at any one moment of time.

Sec. 22. When an island is formed in the sea, which rarely happens it is the property of the first occupant for before occupation it belongs to no one. But when an island is formed in a river, which frequently happens, if it is placed in the middle of it, it belongs in common to those who possess the lands near the banks on each side of the river, in proportion to the extent of each man's estate adjoining the banks. But, if the island is nearer to one side than the other, it belongs to those persons only who possess land contiguous to the bank on that side. If a river divided itself

and afterwards unites again, thus giving to anyone's land the form of an island, the land still continues to belong to the person to whom it belonged before.

But if the island was formed by the bed of the river becoming dry in any part, it might be doubtful to whom it belonged. The bed of the river, as long as the river flowed over it, was public or rather the use of it was public, while the soil itself was the property of the private individuals to whom the soil of the banks belonged, and, therefore, when the bed was dried, when it had ceased to be subject to public use, the private owners resumed the rights of ownership over it. If the bed was not wholly but partially dried up, the island formed would belong to the owner of the nearest bank. If it lay entirely on one side of the stream, or if it lay partly on one side and partly on the other, it would belong to the owners of both banks in such proportion as a line drawn along the middle of the stream would divide it. In the case of a non-navigable river, the Roman Law has been strictly adhered to in England as well as in Maryland. The riparian owner was and is still entitled to the bed of the stream ad filum medium aquae.

In *Ridgely vs. Johnson*, decided 24th November, 1801, note in 1 Bland 295, Chancellor C. Hanson states the law of accretion as follows:-

That the law respecting accretion, alluvion, and islands in small waters or rivers, is part of the law of Maryland, as well as of the law of England, and in his conception it is no consequence, whether the persons having lands on such waters acquired their title before or after the islands opposite to their lands were formed. They had, at any rate, a common right to the river and, of course, either one or all of them has a right to the benefit of an island formed in the river. And even if they have not an exclusive right to the benefit of such islands, it seems, at least, that all those having lands in the river or the inhabitants in general of the State must have that right.

And the common right of those having land on small water to the

little islands, which are formed after the titles acquired, seems at least as reasonable as the right of accretion.

And in *Hammond vs. Forrest*, 16 November, 1810, 3 Bland, Note, page 472:-

"But the question is taken up on the principles of it being an island according to the civil law, and according to the decree of the late chancellor in the case of *Ridgely vs. Johnson*."

If it is considered as belonging to the caveators, as owners of the lands on the nearest side, who appear in the part opposite a part of the island to be bounded by the river.

The rights of owners of land bounding on the sea, or arms of the sea or other navigable river conveyed no right to the grantee to the land below high water mark and the King retained the ownership of the soil. But the owner of the shore land had not alone the common right of fishing, and of navigating but also the right to the increase of the soil formed by the waters gradually or imperceptibly receding, or by any gain by alluvion from the shore out.

The general rule is that the sovereign holds the land under the water-front subject to the riparian rights of the shore owner; and, under this rule, dry land within the limits of a patent for land under water belonged to the patentee claiming thereunder if it was formed on the water and extended inward toward the shore, but belongs to the prior patentee of coterminous upland if formed by gradual accessions, extending from the shore into the water, notwithstanding the fact that by the influence of floods and freshets large deposits of mud have been made in the bed of the river, materially contributing to the forming of the land, since the subsequent patent was merely a grant of the State's interest in the land under water subject to all existing riparian rights.

64 Md. 439, *Linthicum vs. Coan*.
Ridgely vs. Johnson, 24th Nov. 1801,
Bland 1, 316 Note.

At common law the riparian owner had, however, no right whatever

to make improvements in front of his land, but this was changed by laws passed in an early period and in Maryland riparian proprietors were given the exclusive right to make improvements in the waters in front of their lands and such improvements, when made, belonged to them as an incident to their estate.

B. & O. vs. Chase, 43 Md. 37.

The right of lot owner pointing on the water to extend his lot or improve out to the limits prescribed by the City is a franchise, a vested right and when the right of improvement provided by Act of 1745, Ch. 9 was granted in 1781 became vested, no right or franchise inconsistent herewith could pass by grant in 1795, the latter being construed with reference to the rights conveyed to the former.

The right of the King (the State) to grant the soil sub modo has never been denied and the question whether the soil passes or not being always made to depend on the construction of the grant from the particular expression used. The case of Browne vs. Kennedy, 5 H. & J. 159, has been more frequently quoted by the Courts of Maryland and was depended upon as late as 1918 in the case of Bowie vs. Western Md. R. R., 133 Md. folio 7.

In Browne vs. Kennedy it appeared that in June 1700 a tract of land, called Todd's Range, (a survey of Cole's Harbor) was granted to James Todd. The courses and distances included Jones Falls, at that time a tidewater stream. The title became later on vested in Charles Carroll, who conveyed a tract on the northwest side of Jones Falls to William Lyon, another tract on the southeast side the Falls to Lawson.

Judge Buchanan, who delivered the opinion for the majority, said:-

"It seems to be admitted that as the lands conveyed by Carroll to William Lyon and Alexander Lawson are described in the deeds as bounding upon Jones' Falls, if that had been a private river, they would have been entitled to hold to the middle of the stream; and, if I am right in supposing that the property in the soil was Carroll's, subject only to the common user, I cannot perceive why Jones' Falls, when the bed had become private property, should not be subject to the same rules (as the right to the soil) that prevail in relation to private rivers, which are private property. In many respects the same rules do prevail."

Then on page 206, he said:-

"If, therefore, where a man, having an estate through which a private river runs, conveys away his land lying on one side of the stream and described it as bounding on the river, the purchaser will, by operation of law, hold to the middle, it would seem, by parity of reason, that if the same man, having an estate through which a public river runs, the soil of the bed of which makes a part of his estate as in the case of a private river, conveys away the land lying on one side, and makes the river the boundary, the purchaser would by the same operation of law be entitled to hold, in respect of the rights of soil, to the middle of the stream."

The rights of owners of land on navigable rivers was somewhat doubtful and uncertain when the Act of 1862, Ch. 129 was passed, which is now embraced in Sec. 47, 48 and 49 of Article 54 of the Annotated Code.

This Act made material changes and enlarged the rights of the proprietors of lands bounding on navigable water. Section 37 places the owner of land adjacent to navigable water upon the same footing in respect to accretion as the owner of land bounding on water not navigable, only that on navigable water the rights of the shore owner are limited as well as enlarged to the rights of navigation and he must not interfere with the navigation of the stream and, therefore, so far as the doctrine of ad medium filum aquae is concerned it does not apply because it may happen that the channel or deep water lies close to one bank and, therefore, the opposite shore owner would have the right to make his improvements according to deep water.

"The proprietor is not compelled to commence his improvements at the shore but may begin at the outer extremity of the projected improvement, and extend it the same to the bank of the river."

Goodsell vs. Lawson, 42 Md. 373.

By the Act of 1862, the rights of the shore proprietors on navigable waters have been defined by statute, and secured to the proprietors to an extent beyond what the common law allowed, even according to the largest definition of those rights under that law.

Garitee vs. M. & C. C. of Baltimore,
53 Md. 432.

And in Hess vs. Muir, 65 Md. 597, the Court, referring to the

Act of 1862, Sec. 37, 38 and 39, said:-

"The subject matter of the right declared by the first of these sections to be in the riparian proprietor in all accretion to said land.

It seems obvious that the right does not attach until the accretions to land are formed and become visible, so long then as the water covers the soil adjacent to the land, it is not within the contemplation of the Act, but remains under the control of the State, subject to the possibility of accretion being made or formed therefrom."

Under this Act the riparian owner of land on navigable water has the same right to accretions, whether imperceptibly or palpably formed, and the same right to create them as is enjoyed by an owner of land on a non-navigable stream. But the parallel is confined to the accretion itself, and no grant to the land owner on navigable waters is intended of the soil itself over which navigable water still flows.

The benefit of possible accretions to the landholder, is preserved to them by the last section of the Act, directory that no patent shall hereafter issue for land covered by navigable waters.

The Patapsco River southwest of the Hanover Street Bridge is being gradually filled up. But since the Act of 1862, while the ownership of the soil, as long as it remains covered by water remains in the State, yet the Law Office by Section 49 of Article 54, of Annotated Code, could not issue a patent, and as soon as dry land is formed, said land by Section 47 becomes subject to the same laws as islands formed in water non-navigable, and as to those islands the civil law governs.

See Day vs. Day, 22 Md. 530 and see
Note 1 Bland 295 and Note 3 Bland 472.

In Hammond vs. Forrest, 3 Bland 472, note, the Court says:-

"It does not appear, however, that the ground in question is connected with the mainland by the bar which is referred to from the letter N in the plat.

An objection might be made from what is stated in the depositions, and marked on the plat as to the course of the ferry boat, which goes over the island, if in that case, it can be so called, or rather, by the intersection of the water makes two islands of the land.

But the question is taken upon the general principles of it being an island, and according to the civil law, and as-

ording to the decree of the late Chancellor, 1 Bland 316, note, it is considered as belonging to the caveators, as owners of the land on the nearest side, who appear in the part opposite a part of the island to be bounded by the river."

Therefore, in Maryland it has been held that if the character of the island is such that it would ordinarily be regarded as part of the riparian estate, the state cannot grant it to a third person, but that the titles to it are in the grantees of the upland.

A close similarity upon the fact with the condition in the Patapsco River appears in the case of 9 Cush, 549, Trustees of Hopkins Academy vs. Dickinson.

It appeared by the case, that this land was formed on a part of the soil which formerly constituted the deep bed and channel of the Connecticut River, where the main current of water formerly flowed in consequence of the river having changed its course.

The effect of this has been that the main body of the water has for some years flowed in a new channel, by means of which the water on the old bed of the river became stagnant, deposits of earth and sand were formed in various parts of it, which have gradually risen above the surface and united with each other so as to become valuable land.

The Court decided that where the course of a river not navigable changes and cuts off a point of land on one side, forming such an island, such island still belongs to the original owner. The Court said:-

"It has been repeatedly settled both in this State and in Connecticut that the Connecticut River, though valuable for the purpose of boating and rafting, yet so far as riparian proprietorship is concerned, is considered a river non-navigable as that term is used in common law."

In such case, if the bed of river, being gradually deserted by the current, fills up and a new land is formed, such newly formed land belongs to the opposite riparian proprietors respectively to the thread of the old river.

And if new land be formed in the river above such island independent of the island, and not by a slow, gradual and insensible accretion to it, such

new land above belongs to the opposite riparian proprietor respectively to the filum aquae or thread of river.

The thread of the river in such case would be the medium line between the shores or natural water lines on each side at the time the new land was formed without regard to the channel or deepest parts of the stream.

The reasoning in this case is based upon the rules of the common law and conforms fully to the Civic Law as laid down in the Institutes of Justinian.

REMEDIES AND SUGGESTIONS SO FAR AS THE MAYOR
AND CITY COUNCIL OF BALTIMORE IS CONCERNED.

-1-

The Patapsco River is a part of the Harbor system of Baltimore and the State has deputed to the Mayor and City Council of Baltimore its right, or assigned to it the duty of keeping the Harbor of Baltimore in proper order. Sec. 8 of the New Charter of Baltimore City, provides for the preservation of the navigation of the Patapsco River and tributaries.

The City can prevent any person from depositing any earth, sand or dirt on the shore of the said river or tributaries which may fall or be washed into said river.

The City could insist with effect that before any artificial dumping be made, the grounds be protected by stone walls or log pens or otherwise. It could open, widen and deepen the channels. It could remove or compel removals of all obstruction placed there without competent authority.

As the public has a right at common law to navigate over every part, the City is not permitted to deposit or dump in front of any one property so that it would affect the rights or privileges of riparian owners, as a state itself cannot except under its power of eminent domain and upon making just compensation, interfere with the navigable streams within its territory, in any

manner or for any purpose other than that of regulating, preserving and protecting the public easement of navigation therein.

The City can take under the right of Eminent Domain for public use all kinds of property . This right extends to every kind of property, including not only that which is tangible but also all rights and interests of any kind, including easements.

Baltimore is acquiring a reputation for its parks, but so far it has permitted all its waterfronts to become commercialized, and although Baltimore has most abundant water, it has scarcely a place where water sports may be engaged in.

The Patapsco River southwest of the Hanover Street Bridge is valueless for commercial purposes because its shallowness makes the use of large boats impossible, but it can be made valuable for boating; etc.

A waterfront park of several hundred acres could be made by bulkheading the stream. This would give first, a much needed dumping ground for ashes and dredging, and in a few years the flow of the water being quickened by the narrowing of its channel would deepen the channel and would not fill the harbor with its deposits.

The park itself would greatly enhance the value of the surrounding country and I believe that the City would make a lasting investment by acquiring the waterfront on both sides of the Patapsco, but particularly on the Baltimore County side, including the riparian rights. I would advise disregarding entirely the patents to the islands at present, as of no value, but proceed with the condemnation proceedings.

A patent simply grants the State's interest in land, and is subject to all existing rights; the present patentees of said islands, all of whom have received their patent subsequent of the passage of the act of 1862, have no title superior to the title of the riparian proprietors.

Linthicum vs. Coan, 64 Md. 439.
Jay vs. Bibber, 94 Md. 690.
Armstrong vs. Bitteringer, 47 Md. 108.

The opening of a public highway along the waterfronts alone would not be sufficient, as the riparian right to the accretion is not divested by the intervention of a public highway between the riparian estate and the water course.

See 18th Louisiana, pages 122-23.

Samuel M. Zycki

March 14th, 1934.

MEMORANDUM FOR MR. DUE.

Ernest J. Gore vs. Clarence T. Todd.
150 Md. 285.

OK
Patent granted for 53 acre tract returned to include an entire island. Evidence that island had been in possession of caveators and ancestors - held sufficient to establish title by adverse possession as regards a portion of island not included in deeds by which portion was conveyed to caveators. As holders of the record title to $53\frac{1}{4}$ acres of Adams Island, and as claimants of the title of the remainder of the island by adverse possession, appellees filed a caveat against the issuance of the patent for any part of the island as a vacant area within the purview of the law. Caveat sustained and patent refused. Appellees had paid no taxes on that portion not included in their record title, but this did not militate against their claim of title by prescription.

NOTE. Portion in question was marsh land used only for pasturing and gunning purposes. Notices had been posted at times by caveators.

See also Ramsay vs. Butler, Purdum Co.,
148 Md. 438.

OK
Appellant applied to Land Office for patent on land as vacancy and appellee filed caveat on ground land had been granted by proprietary, and that there was, therefore, no vacancy subject to a new grant. Held for caveator. Decided on question of boundaries.
JD-R.

VACANT LAND

190 U. S. 301
61 L. R. A. 230 U. S. C. Ct. of App.
Cosmis Exploration Co., vs. Gray Eagle Oil Co.

Vacant lands are such as are absolutely free, unclaimed and unoccupied. "The word 'vacant' when applied to lands means those which have not been appropriated by individuals."

(Marshall vs. Bonaparte, 18 Mo. 84,87)

The land was not vacant and open to settlement at that time because it was then occupied by the defendant's grantors under a claim and color of right. It matters not that they had not at that time acquired any rights against the United States. But whatever his rights may be the fact that the miner is in actual possession without having made any location at all shows that the land is not "vacant."

See opinion of Mr. Justice Pickham, 190 U. S. on page 314 (same case as above).

"Appellant's contention that the word 'vacant' as used in the statute means public lands which are not shown by the records of the local office or General Land Office, to be claimed, appropriated, or ~~used~~ reserved and cannot be ^{accepted} ~~occupied~~. Portions of the public lands may be occupied, and for that reason be not subject to selection, and yet there be no mention of their occupancy in the records of the Land Department."

Capron vs. Van Horn
Sup. Ct. Cal. June 30, 1927
258 P - 77 - 82

Land withdrawn from entry for reclamation project in 1907, by Secretary of Interior.

Occupied by defendant in 1911, who cleaned, leveled, ditched, fenced, etc.

On November 3, 1915, order of withdrawal revoked by Interior Department and land open to entry.

Plaintiff had selected land in question in May, 1915, and selection approved.

Held. Inasmuch as the land in question was not "vacant" and "unreserved" land at the time plaintiff's predecessor secured approval of her lieu selection such selection and approval were unauthorized under the Act of May 2, 1914.

The Act of 1914 provides "the State of California or any of its grantees may, with the approval of the Secretary of Interior reconvey to United States any of the lands heretofore granted to said State - and select in lieu thereof an equal amount of vacant, unappropriated, surveyed, unreserved, nonmineral public lands within said State."

Opinion quotes Donley vs. West, 189 P. 1052.

Donley vs. Van Horn
193 P. 514 - September 28, 1920.
(See Capron vs. Van Horn and Donley vs. West)

During his occupancy he cultivated the land and made valuable improvements thereon. Notwithstanding good faith, defendant's occupancy during all the time that Secretary's withdrawal order of April 2, 1909, was in force, was no better than a naked trespass.

But this would not prevent his occupancy from becoming lawful and the land removed from the category of "vacant" land, if before any inceptive right could vest in the plaintiff the withdrawal order should be revoked and land restored to settlement and entry while occupied by defendant.

Our conclusion is that the land in controversy was not subject to disposition under the Act of May 2, 1914.

Donley vs. West
District Court of Appeals, ~~1st~~ District Cal 5/1/20
189 P 1052

Fact similiar to Capron vs. Horn, 258 P 77, both cases
involve Reclamation lands in Imperial Co. Cal.

This case decided against occupant and in favor of
patentee as occupant had ^{done} ~~along~~ nothing "to connect himself with the para-
mount source of title."

"Vacant land is such as is absolutely free, unclaim-
ed and unoccupied. Cosmos Exploration Co. vs. Gray Eagle - Co., 112 Fed.
4-13."

Pritchett vs. Ballard,
Sup. Ct. Georgia 7/21/97
29 S.E. 210

Ballard instituted proceedings to take up land alleged
to be vacant. Pritchett alleges title adverse possession

Surveyor testified land had never been surveyed
and that land was in fact vacant - verdict for patentee.

Stockley vs. Cissana 119 Fed. Rep. 812 - 834

An over night change in the course of the Mississippi River, left over 1000 acres of land formerly on eastern bank of River, on the western bank. Held such a sudden change does not change state boundries but ^{leave} ~~have~~ same in middle of old dried up bed. Tenn. granted a portion of the new made land, one of questions in case waswhether the law of the state providing for the granting of "vacant lands" applied to the bed of a navigable river suddenly exposed by a change in the course of the river depends upon whether such new made dry land, resulting from recession, is "vacant land" within the meaning of the land law of the state.

Held - "The lands included in the grant were at the time of the enactment of the law under which the grant was issued, plainly and clearly not within the terms of the law * * * *."

(Law of ^{ac} ~~se~~cretion thoroughly gone into in this case).

Miller vs. Hurley,
Wyoming - Sup. Ct. 12/19/27.
262 P. Page 240.

Rights of lessee of public lands -

On the second contention of appellant, we are of the opinion that lands in question were not, on June 19, 1924, vacant lands within the meaning of Section 706, Wyoming Comp. Stat. of 1920. That section refers to lands vacant; in fact, **unoccupied**. The lands in question were occupied by appellee on that date, as shown by the evidence. They were occupied by forty (40) producing wells - etc. Hence they were not lands to be auctioned off to the highest bidder under Sec. 706 Wyoming Comp. Stat. 1920.

State vs. Pacific Guano Co.
22 S. C. 50 - Nov. 1883

Defendants on August 1882, and other times, removed phosphates etc., from beds of navigable waters of State. Action by State for damages and injunction. State rests claim on rights as successors to British Crown to fee of all vacant, ungranted lands in limits of her territory. Defendants claim adverse possession of beds of creeks for century.

Held for Plaintiff - - State.

As title of defendants was in doubt they had taken out patents in 1869, under State law "in pursuance of an act of the legislature entitled, an act for establishing the mode of granting lands now vacant in the State " (1791).

"There seems to be no doubt that the state as such trustee (of beds of navigable streams) has the power to dispose of those beds as she may think best for her citizens; but not being as it seems to us subject to grant in the usual form, under the provisions of the statute regulating vacant lands * * * " special act necessary.

Morris vs. U. S.
174 U. S. Reports 196
May 1, 1899.

Grant by Charles I to Lord Baltimore included bed of Potomac River . By cession of Maryland to United States, that part of sub-jacent soil of river became vested in United States. Patent from General Land Office to John L. K ichwell for "a tract of vacant land in the bed of the Potomac.

"In Proprietary vs. Jennings, 1 H. & Mc H. 92, an information was filed by the Attorney General of the Lord Prop. in 1733, to vacate a patent on the ground that it had been illegally obtained and the case clearly indicates that land under tide water was not patentable.

Opinion then gives facts of Smith & Purviance vs. State, 2 H. & McH. 244, owner of a four acre marsh by resurvey, had seventeen (17) acres of land added. But the seventeen (17) acres now is and then was part of the waters of the northwest branch of the Patapsco River" patent in that case was vacated.

Held - Patent must be vacated.

War Fork Land Co., vs. Llewellyn 6/5/23.
Dt. of Appeals of Kentucky
251 S.W. 663.

War Fork agreed to purchase land 1/19/15, if Llewellyn, Appellee, should obtain patent to perfect title. After patent War Fork refused title alleging previous survey and adverse possession in another. The law provides "any person who wishes to appropriate any vacant and unappropriated lands may on application, etc" * * .

Opinion states "Where one makes an entry or survey those purposes (settling and improving of vacant lands) are deemed to have been manifested and it has been held without exception that such acts withdraw the land so entered or surveyed from the operation of the statutes.

Crider vs. Crum (Ky)
25S W (2d) 1009.

A patent granted of land already held under color of title by well defined boundries. Opinion cites War Fork Land Co. vs. Llewellyn :

"The word 'vacant' as ordinarily understood means 'unoccupied'".

If land for which a void patent has been issued by the state cannot thereafter be patented as vacant land and if the intention to settle and improve land, as evidenced by an entry and survey excludes it from the statutory definition of vacant and unappropriated lands, certainly land occupied by one who claims to a well defined boundry under color of title cannot be regarded as vacant and unappropriated within the meaning of the statute.

Melvin vs. Schlessinger, 138 Md. 357.

Applying Sec. 46,47 and 48 of Article 54(1924-Ann. Code).

The accretion started at the edge of a channel and extended toward the shore. Opinion holds that land so formed belongs to riparian owners. That patent issued to another party gave such party no title.

VACANT LAND

DiLegge vs. Peper, 148 Md. 268.

Construction and interpretation of Act 54 Sec. 25.

(Case decided on point of adverse possession). The further claim was made in argument, but not in record, that the land in question was not vacant land because at times cultivated. This contention is without force.

"The language of the Act is that 'any vacant land whether cultivated or uncultivated, may be taken up under the statute by complying with its provisions,' thus recognizing the fact that cultivated land may be vacant land within the meaning of the statute."

Hammond vs. Norris, 2 H. & J. - Page 137.

"*****if the prior certificate was caveated in the Land Office, and it was proved and made to appear to the Judges of the Land Office, that neither the person for whom the prior certificate was made, nor any one claiming the certificate, had any legal estate or seizin in ~~the~~ ^{the} original on which the certificate of the resurvey was made, that then the prior certificate would be and ought, by said law, practice ~~the~~ usage to be vacated, and a patent ought to issue on the second or subsequent certificate *."

"Mr. Callahan (in Land Office 34 years). He knows of no Proprietary instructions given that a person taking out a warrant of re-survey on lands of which he was not seized in fee, and in virtue of that

warrant including vacant land, and compounding for the same, which prevented such person from having a patent for such vacant land."

The above language and other use of the word vacant in the same case indicate that the word when used in reference to Land Office matters means lack of legal estate or seizin, or lack of color of title. See also use of word "vacant" in Garretson vs. Cole, 2 H. & McH. 459 - this case also indicates word means lack of title or estate or seizin.

See also Hammond vs. Norris, 2 H. & J. 140 -

"A common warrant may be located on any uncultivated land in the county to the surveyor of which the warrant is directed, if no person has acquired a right of pre-emption to such vacant land."

Reid vs. Minn. & R. R. Ry. Ci. Dec. 27, 1929
228 N. W. 548.
Sup. Ct. Minnesota.

Right-of-Way granted Railroad over forty (40) acre tract of state lands. Patent later granted for remaining portion of tract; patentee claims spur track. Railroad had equitable title only, but this was sufficient. Possession by Railroad was notice to patentee.

The Chollar Potosi Mining Co., vs. Kennedy & Keating - 1867
3 N. W. 361.

A. has been for five years in constant use of a piece of land as a road - B. fences up the road, and when sued alleges an appropriation for seven years.

"We see no reason why one who appropriates a portion of the public domain for the purposes of a road, is not as well entitled to the protection of the courts as one who appropriates a fraction of the same domain for a mill site or corn field."

COPY

February 26th, 1934

MEMORANDUM

in re:

REED BIRD ISLAND

---000---

Reed Bird Island was patented by John J. Bruns September 10th, 1909. This so-called island contains about 33 acres and is located near the Anne Arundel County shore about 400 feet from the Brooklyn end of the old Long Bridge, of the east land of which the City owned a half acre. A portion of this was sold by the City to the Standard Oil Company for a filling station, the City reserving the riparian rights.

At the time the patent was issued for Reed Bird Island the land was actually covered by water at high water - so much so that when the County Surveyor surveyed the land for the patent the beginning point was on the Long Bridge owned by the Mayor and City Council of Baltimore. There is now pending in the Circuit Court for Anne Arundel County on the Equity Side a bill of scire facias to vacate the patent. The City's attack on the patent to Reed Bird Island is based upon the fact that at the time of the patent -

(a) The land was entirely covered by water at high tide.

Code, Art. 54, Sec. 49, provides as follows:

"49. No patent hereafter issued out of the land office shall impair or affect the rights of riparian proprietors, as explained and declared in the two preceding sections; and no patent shall hereafter issue for land covered by navigable waters."

(b) The rights of adjacent shore owners, under Sections

COPY

47 and 48, are -

1st: The right of accretion;

2nd: The right to build a wharf or bulkhead and extend the shore lines out into the river.

(c) That the City owned the old Light Street Bridge (Long Bridge), on each side of which the filling formed.

(d) The City owned one-half acre of land at the Anne Arundel end of the Bridge.

(e) The patenting of these islands would deprive the City of its riparian rights.

(f) The island is now within the limits of Baltimore City as extended by the Acts of 1918, Chapter 82.

(g) Under Sections 7 and 37-A and Sub-paragraph 8 of Section 66, the State's title to the navigable waters of the Patapsco River has been transferred to Baltimore City.

(h) In the case of Linthicum vs. Coan, 64 Md. 439, the Court of Appeals decided that the Patapsco River is a navigable river in which the tide ebbs and flows.

(i) The proceedings were filed in Anne Arundel County in 1916 and Frank Gosnell, representing Wagner, who succeeded John P. Bruns in title, filed an answer and also 25 photographs as exhibits. The case was not set down for a hearing because it was deemed advisable to wait until the City had annexed this territory and then bring an action in the City. Sometime after annexation we discovered a number of bill boards on the flats, designated as Reed Bird Island, and we notified the owners of the signs to remove them. They immediately rented from the City. The City also rented space adjacent to the fill on the Hanover Street Bridge as a landing place for two house-boats, although I don't think any rent was collected.

COPY

(j) The State Roads Commission in constructing the fill of the Hanover Street Bridge took a deed from Wagner and wife granting permission to construct a fill on Reed Bird Island. The City was not a party to this deed and was not aware that the transaction was going on.

(k) No effort was made by the Law Department to bring to trial the case in Anne Arundel County for the reason that the officials of the Law Department deemed that the City was not actually in possession of the land. Bruns and Wagner had been paying taxes upon the land in Anne Arundel County and in Baltimore City until the taxes were abated by order of this department.

From 1916 on the matter was consistently brought to the attention of this department by attorneys employed by Wagner, but it never was brought to an issue until recently when I accompanied Mr. Ruzicka to Annapolis and went over the papers in the case. I have been trying to find the files in this office but I have been unsuccessful thus far.

Mr. Ruzicka suggests that we allow the case to remain in Anne Arundel County and have the testimony taken before an examiner of that Court in this City. This raises a nice point of jurisdiction, which we will have to decide, that is, the action being a local one must be brought in the jurisdiction where the land lies and as the boundaries of Baltimore City have been extended to include this land, whether this does not change the jurisdiction. I think, however, there is a saving clause in the Acts of 1918, Chapter 82, covering all actions then pending.

Mr. Ruzicka advised me that Mr. Wagner entered into a contract of sale with the City for Reed Bird Island for a consideration of \$125,000.

Thank on Title to Real
and
Leasehold Estate
@ p 88

Where the boundary is on or along a navigable stream, the title extends only to high-water mark, all the land below high-water mark being a part of the jus publicum

RR Co vs Balto 106 MD-561

"navigable" in this connection in Maryland means "tidal" the old common law meaning.

At common law, the only method whereby a private individual could become the owner of land under navigable waters was by an express grant from the State

RR Co vs Smith 97 MD-177-186

The word "shore" as used in conveyancing when applied to tidal waters, both in the common + civil laws means the space between high + low water marks

Dredging Co v Smart
108 MD-54, 60

3209

State of Harry M Wagner

ST DL 26-445

Restate 6-30-1946

7-6-1946 Will admitted

148-1

Letters

Notice

8-7-1948 Real Estate

255-300

✓

Estate of

Supp. MC 3/221

Lenore V. Wagner

STAC 63-43

Testate 11-27-1946

12-10-1946

Will admitted

221/464

Letters

Not. in

1-25-1947

Real Property

200-181

1/6 interest:

3/16 Homer St

SL 2492-108

3LP 6688-130

* 208³³

1/8 interest

Canary Island 29.31 ac

* 150-

Supp AD 13/273

State B

Robert B. Wagner

Settle 57-037

Restate 10-28-1947

11-16-1943 Will admitted 211/269

Letters

Not in

8-14-1945 Real Property 294/494
297/38

1/4 interest:

3426 Hammer St 25' x 107' to alley
see 2492-108

5

2LP 6688-130

da 12-18-1944

fec 12-26-1944

Western Commercial Bank
Merchants Trust Company
of Baltimore, Md.
Trustees w/ Robert B. Wagner
to

Lenore V. Wagner (also k/a
Lenore V. S. Wagner)
Melba W. Sutton
H. Milton Wagner
(also k/a H. Milton Wagner Jr.)

Wm. H. Harry B. Wagner TPO 156-81
Ed Wagner vs Wagner per G. B. City & SA-948
+ Wm. H. Robert B. Wagner HB 211-169

1500

Optic Co. to all interest
St. 3416 Hammer St

Project
Robert B. Wagner met. G. H. in fee Rm

Δ

2LP 7223-172

sa 12-1-1947

Rec 12-23-1947

Hilton Wagner
Refuted w/
Genore V. Wagner

to

Hester Corner Wagner

2LP 5116 221-464 Sale stipend

80 B City 10-21-1947

41666

O g to O h t d in fee all
interest of Genore V. Wagner

3426 Hammer Street

2LP 6688-130 (8th)

Together -

in O h t d in fee

Parents -

Robert B. Wagner
Cunningham Trusts
Wm Harry M. Wagner
and Indemnity

City
OK 75A-948
W 351-78

VS

Alice B. Wagner
Susan M. Wagner
Lenore V. S. Wagner
Melba W. Sutton
Harriet A. Sutton - infant
Alan C. " - infant
Harry W. Sutton - infant
H. Melton Wagner Jr
Margaret Wagner - infant
Henry M. Wagner - infant
Joan Wagner - infant
Florence C. Wagner - infant
Robert B. Wagner Jr - infant
Richard V. S. Wagner - infant

12/27/1935

A/C

6-30-1946

Wm Harry M. Wagner died
Harriet C. Wagner his wife died

5/13/1904

List of Real Estate

3426 Annapolis Block (now Cannon St)

Req pts on the W₃ of First St at a point
— distant 110' southerly from a point
on the W₃ of First St which would be
X by the E of Baltimore St if extended
in a westerly direction 70' & 100'
southerly 60' on the W₃ of First St 25'
westerly at right angles to 1st St 100' to
the E shore of the Patuxent River
these situate northerly 60' on the Patuxent
River 11 to 1st St 25' + westerly by
a straight line 100' to the S

See G W Tr. 490

SCL 3942-51

SCL 4156-601

1/2 undivided interest in
Island in South Branch Patuxent
Ward 25
Sec 25
Block 86
E and SW₃ Annapolis Block

Apparently a #100 GRC only

Red Bird Island (?)

Begin at a point on the southern side
of the right way of the Curtis Bay Branch
of the B+O R.R. Co. at the end of 26' 6" in a
line drawn S 73° 20' W from the SW corner
of the W of the trestle of the said railroad
over said Potomac River & by on water of
said River S 45° 45' W 1640' & N 38° 21' W
920' & N 32° 30' E 842' to the right way of the
said railroad & continuing to land
on the water of said river & of said
right way S 77° 10' E 1320' to the S

Containing 29.31 acres +

Sec 3357-151

Sec 3628-613

1.2.1926

Decree - That wth Harry B. Wagner all
residuary estate xx passes free char
& discharged of any and all trusts equally
to his children living at death of his wife
to wit:

Robert B. Wagner

Genora V. S. Wagner

Arthur W. Fulton

H. Milton Wagner, Jr

Order No. 1935In response to the application of Mr. N. M. Sandrock Jr.

Application No.

The Title Guarantee Company furnishes the following list of references against:WagnerHenry V. J.

SURNAME

GIVEN NAME

THE REPORT BELOW IS TO, BUT EXCLUSIVE OF, THE FIRST BUSINESS DAY PRIOR TO THE DATE
HEREOF. OPEN CASES INSTITUTED AT LAW ARE REPORTED ONLY TO THE LAST RETURN DAY.Plaintiffs in ejectments and in land instalment
contract foreclosures are given as Defendants.THIS WAY ONLY
NO REFUND ARE GIVEN AGAINST ANY
NAME EXCEPT AS WRITTEN HEREON.Date 3/14/53Taken off by ✓Verified by ✓

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
City Court Judg- ments since January 1, 1942							
City Court Open Cases Instituted since January 1, 1942							
City Court Appeal Docket Judg- ments since January 1, 1942							
City Court Appeal Docket Open Cases Instituted since January 1, 1942							

NOTHING FOUND

NOTHING FOUND

NOTHING FOUND

NOTHING FOUND

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
Superior Court Judgments since January 1, 1942							
					NOTHING FOUND		
Superior Court Open Cases Instituted since January 1, 1942							
						NOTHING FOUND	
Common Pleas Court Judgments since January 1, 1942							
Common Pleas Court Open Cases Instituted since January 1, 1942							

[illegible]

	Docket	Folio	Plaintiff	Defendant	Remarks
Circuit Court No. 2 Dockets since January 1, 1895					

NOTHING FOUND

[illegible]

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
U. S. Courts Judgments and Decrees since January 1, 1898							
						NOTHING FOUND	
U. S. Courts Open Cases Instituted since January 1, 1898							
						NOTHING FOUND	
Mechanics' Liens since January 1, 1950							
						NOTHING FOUND	
Insolvency since January 1, 1890							
						NOTHING FOUND	
Bankruptcy since July 1, 1898							
						NOTHING FOUND	
Criminal Court Recognizances since January 1, 1898							
						NOTHING FOUND	
Caveats since January 1, 1903							
						NOTHING FOUND	
Tax Sales since January 1, 1868 Old City; January 1, 1888 Old Annex; January 1, 1919 New Annex	Location of Lot						

Order No.

In response to the application of Mr. *W. M. Sandrock Jr.***The Title Guarantee Company** furnishes the following list of references against:—*Wagner*

SURNAME

H. Milton

GIVEN NAME

THE REPORT BELOW IS TO, BUT EXCLUSIVE OF, THE FIRST BUSINESS DAY PRIOR TO THE DATE
HEREOF. OPEN CASES INSTITUTED AT LAW ARE REPORTED ONLY TO THE LAST RETURN DAY.Plaintiffs in ejectments and in land instalment
contract foreclosures are given as Defendants.Date *3/14/55*Taken off by *✓*Verified by *2*

AS REQUIRED BY THE RULES OF THE COURT
THIS WAY ONLY
 NO REFERENCES ARE GIVEN AGAINST ANY
 NAME EXCEPT AS WRITTEN HEREON.

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
City Court Judgments since January 1, 1942							NOTHING FOUND
City Court Open Cases Instituted since January 1, 1942							NOTHING FOUND
City Court Appeal Docket Judgments since January 1, 1942							NOTHING FOUND
City Court Appeal Docket Open Cases Instituted since January 1, 1942							NOTHING FOUND

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
✓ Superior Court Judg- ments since January 1, 1942	1947	314	12-1-47	Costs	Balto	(H.M.) & Co. Inc.	
Superior Court Open Cases Instituted since January 1, 1942							
Common Pleas Court Judg- ments since January 1, 1942							
Common Pleas Court Open Cases Instituted since January 1, 1942							

NOTHING FOUND

NOTHING FOUND

NOTHING FOUND

[illegible]

Circuit Court No. 2 Dockets since January 1, 1895	Docket	Folio	Plaintiff	Defendant	Remarks

NOTHING FOUND

People's
Court
Judg-
ments
since
January
1, 1954

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
U. S. Courts Judgments and Decrees since January 1, 1898							
						NOTHING FOUND	
U. S. Courts Open Cases Instituted since January 1, 1898	civ. 16	3763	9-26-47		U. S. A.	(H. M.) + Co. Inc.	
	civ. 16	3763	9-26-47		" " "	H. Milton	
Mechanics' Liens since January 1, 1950							
						NOTHING FOUND	
Insolvency since January 1, 1890							
Bankruptcy since July 1, 1898						NOTHING FOUND	
Criminal Court Recognizances since January 1, 1898						NOTHING FOUND	
Caveats since January 1, 1903						NOTHING FOUND	
Tax Sales since January 1, 1868 Old City; January 1, 1888 Old Annex; January 1, 1919 New Annex	Location of Lot						

Order No.

1935

In response to the application of Mr.

N. M. Sandrock Jr.

The Title Guarantee Company

furnishes the following list of references against:

Wagner

SURNAME

Robert B

GIVEN NAME

THE REPORT BELOW IS TO, BUT EXCLUSIVE OF, THE FIRST BUSINESS DAY PRIOR TO THE DATE
HEREOF. OPEN CASES INSTITUTED AT LAW ARE REPORTED ONLY TO THE LAST RETURN DAY.

Plaintiffs in ejectments and in land instalment
contract foreclosures are given as Defendants.

Date

3/14/55

Taken off by

C

Verified by

P

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
City Court Judgments since January 1, 1942							
City Court Open Cases Instituted since January 1, 1942	A 83	120			Applefeld	Robert (1/a Park Garage)	
City Court Appeal Docket Judgments since January 1, 1942							
City Court Appeal Docket Open Cases Instituted since January 1, 1942							

NOTHING FOUND

NOTHING FOUND

NOTHING FOUND

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
Superior Court Judgments since January 1, 1942							
							NOTHING FOUND
Superior Court Open Cases Instituted since January 1, 1942							
							NOTHING FOUND
Common Pleas Court Judgments since January 1, 1942							
							NOTHING FOUND
Common Pleas Court Open Cases Instituted since January 1, 1942							

[illegible]

	Docket	Folio	Plaintiff	Defendant	Remarks
Circuit Court No. 2 Dockets since January 1, 1895					

NOTHING FOUND

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
Magistrates' Judgments since January 1, 1942							
People's Court Judgments since January 1, 1954							

NOTHING FOUND

NOTHING FOUND

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
U. S. Courts Judgments and Decrees since January 1, 1898							
U. S. Courts Open Cases Instituted since January 1, 1898							
Mechanics' Liens since January 1, 1950							
Insolvency since January 1, 1890							
Bankruptcy since July 1, 1898							
Criminal Court Recognizances since January 1, 1898							
Caveats since January 1, 1903							
Tax Sales since January 1, 1868 Old City; January 1, 1888 Old Annex; January 1, 1919 New Annex	Location of Lot						

Order No. 1935

Application No.

In response to the application of Mr. A. M. Sandrock Jr.**The Title Guarantee Company** furnishes the following list of references against:—Sutton

SURNAME

Amelia M.

GIVEN NAME

THE REPORT BELOW IS TO, BUT EXCLUSIVE OF, THE FIRST BUSINESS DAY PRIOR TO THE DATE
HEREOF. OPEN CASES INSTITUTED AT LAW ARE REPORTED ONLY TO THE LAST RETURN DAY.Plaintiffs in ejectments and in land instalment
contract foreclosures are given as Defendants.Date 3/14/55Taken off by HLVerified by 7

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
City Court Judgments since January 1, 1942							NOTHING FOUND
City Court Open Cases Instituted since January 1, 1942							NOTHING FOUND
City Court Appeal Docket Judgments since January 1, 1942							NOTHING FOUND
City Court Appeal Docket Open Cases Instituted since January 1, 1942							NOTHING FOUND

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
Superior Court Judgments since January 1, 1942							
					NOTHING FOUND		
Superior Court Open Cases Instituted since January 1, 1942	1950/121				Rockwell - Gurnee Co.	Sutton & Co.	
Common Pleas Court Judgments since January 1, 1942							
						NOTHING FOUND	
Common Pleas Court Open Cases Instituted since January 1, 1942							
						NOTHING FOUND	

[illegible]

[illegible]

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
Magistrates' Judgments since January 1, 1942	1	359	11/26/45	21 ⁵⁷	Mayor.	Sutton + Co.	
	166	143	4/20/45	20 ⁴⁷	"	" + "	
	9	573	8/4/50	88 ²⁴	M + G. C.	" + "	
	162	175	3/11/43	15 ⁸⁵	Mayor.	" + Co.	
	163	328	8/11/43	16 ⁴⁷	"	" + "	
People's Court Judgments since January 1, 1954							

NOTHING FOUND

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
U. S. Courts Judgments and Decrees since January 1, 1898	<i>civ</i> 3	<i>580</i>	<i>2/20/40</i>	<i>92.²⁶</i>	<i>U.S.A.</i>	<i>Sutton + Co</i>	<i>/</i>
	<i>civ</i> 3	<i>580</i>	<i>2/20/40</i>	<i>92.²⁶</i>	<i>U.S.A.</i>	<i>" + "</i>	
U. S. Courts Open Cases Instituted since January 1, 1898							NOTHING FOUND
Mechanics' Liens since January 1, 1950							NOTHING FOUND
Insolvency since January 1, 1890							NOTHING FOUND
Bankruptcy since July 1, 1898							NOTHING FOUND
Criminal Court Recognizances since January 1, 1898							NOTHING FOUND
Caveats since January 1, 1903							NOTHING FOUND
Tax Sales since January 1, 1868 Old City; January 1, 1888 Old Annex; January 1, 1919 New Annex	Location of Lot						

Order No. 1935In response to the application of Mr. W. M. Sandrock Jr.

Application No. _____

The Title Guarantee Companyfurnishes the following list of references against Wagner

SURNAME

GIVEN NAME

THE REPORT BELOW IS TO, BUT EXCLUSIVE OF, THE FIRST BUSINESS DAY PRIOR TO THE DATE
HEREOF. OPEN CASES INSTITUTED AT LAW ARE REPORTED ONLY TO THE LAST RETURN DAY.Plaintiffs in ejectments and in land instalment
contract foreclosures are given as Defendants.Date 3/14/55Taken off by CVerified by W

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
City Court Judgments since January 1, 1942							NOTHING FOUND
City Court Open Cases Instituted since January 1, 1942							NOTHING FOUND
City Court Appeal Docket Judgments since January 1, 1942							NOTHING FOUND
City Court Appeal Docket Open Cases Instituted since January 1, 1942							NOTHING FOUND

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
Superior Court Judgments since January 1, 1942	✓ C.E.C. 9	✓ 326	✓ 1-18-50	✓ 434. ⁰⁰	Eastern Incept. Corp.	Harry	
	✓ 1947	✓ 314	✓ 12-1-47	✓ Costs	Balto.	(H.M.) + Co. Inc.	
Superior Court Open Cases Instituted since January 1, 1942	✓ 1920	✓ 424			Johnson	Harry M. (eject)	
Common Pleas Court Judgments since January 1, 1942							
							NOTHING FOUND
Common Pleas Court Open Cases Instituted since January 1, 1942							
							NOTHING FOUND

[illegible]

[illegible]

[illegible]

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
Magistrates' Judgments since January 1, 1942	10	518	12-11-50	31. ²⁸	Hecht Co.	Harry	
People's Court Judgments since January 1, 1954							

NOTHING FOUND

	Docket	Folio	Date	Amount	Plaintiff	Defendant	Remarks
U. S. Courts Judgments and Decrees since January 1, 1898							
						NOTHING FOUND	
U. S. Courts Open Cases Instituted since January 1, 1898	Eg- 1067	1-30-26			U. S. A.	Harry M.	
	Law- 4589	5-15-31			Burkhart	"	
	16 3763	9-26-47			U. S. A.	(H.M.) & Co. Inc.	
Mechanics' Liens since January 1, 1950							
						NOTHING FOUND	
Insolvency since January 1, 1890							
						NOTHING FOUND	
Bankruptcy since July 1, 1898							
						NOTHING FOUND	
Criminal Court Recognizances since January 1, 1898							
						NOTHING FOUND	
Caveats since January 1, 1903							
						NOTHING FOUND	
Tax Sales since January 1, 1868 Old City; January 1, 1888 Old Annex; January 1, 1919 New Annex	Location of Lot						

See 0-5

9/15/1857 Patent "Duck Tone" 350 acres

1/19/1854 50 acres of above to Patayasco Co

Acts 1856 (Chap 215) Authority to Corp to construct bridge over Patayasco River + "to enter upon + hold in fee any land necessary or proper for abutments or piers of said bridge"

5/25/1858 1/2 acre Patayasco Co to Corp for bridge

12/4/1858 Patent of "Duck Tone" by Patayasco Co (includes Duck Tone) 3/35 acres. Runs out 100' into water of Patayasco River

Acts 1862 (Chap 129) No patent shall issue to affect rights of riparian owners

Acts 1878 (Chap 159) Anthony's Exec + AAG to purchase Light St Bridge

5/3/1880 1/2 acre etc conveyed by Corp etc to Exec + AAG

6/16/1880 All property of Patayasco Co conveyed to S. Batt. H + Dry Co

Acts 1888 (Chap 98) Light St Bridge to be maintained by B City

9/10/1909 Patent "Peel Bird Island" 33 3/4 acres reserved
to John P. Bruce

9/23/1910 Conveyance of above to Harry E. Wagner

Acts 1914 (Chap 26) Authorized S.R.C. to construct bridge
(Hawner Street Bridge)

3/28/1916 Suit instituted Steele vs Wagner

5/8/1916 H.W. Wagner to State of Ark

Acts 1918 (Chap 82) Homestead Act

COPY

CITY SOLICITOR'S OFFICE

Proposed Deposition

2-A. That on September 15, 1657, Cecilius Calvert, et al, granted unto Major Richard Ewen a tract of land called "Duke's Cove" or "Duck Cove" on the west side of Chesapeake Bay and west side of the Patapsco River, containing 350 acres more or less. 50 acres of this tract of land, by mesne conveyances, became vested in the Patapsco Company, Incorporated, by deed, dated January 19, 1854, and recorded in the Land Records of Anne Arundel County in N. H. G. No. 3, Folio 275. The description in that deed is as follows:-

Beginning on the margin of the waters of the south side of Patapsco River at the end of the second line of the whole tract called Duck's Cove, and running thence along said line and binding thereon as the same now bears by the magnet south 68 degrees east 135 perches, thence north 134 perches, or thereabouts, to the Patapsco River, and thence binding on said river to the point of beginning.

That the Patapsco Company conveyed by deed, dated May 25, 1858, and recorded among the Land Records of Anne Arundel County in Liber N. H. G. No. 7, Folio 207, a tract of land, about one-half of an acre for the purpose of constructing a bridge across the Patapsco River. Said deed recites that the said company agreed to convey the land by an agreement dated April 16, 1856.

On December 4, 1858, the patent of Brooklyn was obtained by the Patapsco Company, which patent is recorded in the Land Office of Maryland in Liber T. A. S. No. 1, Folio 258. This patent states that the Patapsco Company of Baltimore obtained, on June 26, 1857, a special warrant to re-survey the following tracts, among which tracts is "Duck's Cove." The whole patent contains 2735 acres, more or less, and is called "Brooklyn." The description in the patent is as follows:-

Thence running with and binding on the second line of said conveyances (Patapsco Company deed) north 138-1/11 perches into the waters of the Patapsco River, which place or spot is 100 feet from the shore or water edge out into the Patapsco River, thence running parallel to the shore lines of Duck's Cove and keeping at the distance of 100 feet from the shore.

COPY

CITY SOLICITOR'S OFFICE

By mesne conveyances, all the property of the Patapsco Company became vested in the South Baltimore Harbor and Improvement Company, by deed, dated June 26, 1822, and recorded among the Land Records of Anne Arundel County in Liber S. H. No. 20, Folio 29.

COPY

CITY SOLICITOR'S OFFICE

STIPULATION

--oOo--

It is hereby stipulated and agreed between Counsel for the parties hereto as follows:

1st: That on September 10th, 1909, a patent was issued out of the Land Office of Maryland to John P. Bruns for "a tract or parcel of land called 'Reed Bird Island', (being an island in the Patapsco River) lying in Anne Arundel County, State of Maryland, and containing 33 3/4 acres of land, more or less", as will more fully appear from a certified copy of said petition, which is filed herewith marked "Parties' Exhibit No. 1".

2nd: That the survey of Reed Bird Island made the 15th day of September, 1908, upon which the said patent was granted, contains the statements: "The above described land is not covered by navigable waters", and "Improvements: none"; that the description in said survey and the plat attached thereto describe "Reed Bird Island" as beginning on the "east side of Light Street Bridge distant from the bulkhead thereof 24 2/3 perches * * *". That said plat shows the said Light Street Bridge crossing "Reed Bird Island", as will more fully appear from a certified copy of the said survey and plat attached thereto, which is filed herewith marked "Parties' Exhibit No. 2".

3rd: That Chapter 215 of the Acts of 1856 authorized Richard Owens Crisp to construct a bridge over the Patapsco River from a point on the north side of said River called Ferry Bar to such point on the south side of said River in Anne Arundel County as the said Richard Owens Crisp might select. That the said Act also authorized the said Richard Owens Crisp "to enter upon and hold in fee any land necessary or proper for the

C O P Y
CITY SOLICITOR'S OFFICE

abutments or piers of said bridge, and for other purposes contemplated by this Act; and for this purpose" to purchase or condemn such lands as he might deem necessary for the purposes aforesaid.

4th: That on May 25th, 1858, Richard Owens Crisp and Richard Cromwell, Jr., purchased from the Patapsco Company a certain lot of ground which is described in part as "Beginning at a stone planted on the southern shore of the Patapsco River at the water's edge northeasterly from the junction of said bridge, now called the Light Street Bridge, with the said south shore * * *". That ~~a certified copy of~~ said deed is recorded among the Land Records of Anne Arundel County in Liber W.H.G. No. 7, folio 207, and a certified copy thereof is attached hereto marked "Parties' Exhibit No. 3".

5th: That the said Light Street Bridge referred to in the said deed from the Patapsco Company to Richard Owens Crisp and Richard Cromwell, Jr., is the bridge authorized by Chapter 215 of the Acts of 1856, and the bridge referred to in the survey of "Reed Bird Island" and the plat accompanying the same.

6th: That Chapter 159 of the Acts of 1878 authorized, directed and empowered the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County to purchase said Light Street Bridge, together with the buildings, abutments and all other appurtenances thereto belonging or appertaining, if a price could be agreed upon with the owners thereof and if unable to agree with the owners thereof the said Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County were authorized, empowered and directed to build a substantial bridge over said river.

7th: That the bridge purchased or built as provided by said Act by the City and County and the cost of purchasing it and maintaining it was to be borne equally by the said City and County.

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8th: That on May 3, 1880, Richard O. Crisp and Annie E. Crisp, his wife, Richard Cromwell and Elizabeth Anne Cromwell, his wife, conveyed to the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County their interest in said bridge, together with the lot of ground hereinabove referred to, which they purchased from the Patapsco Company on May 25, 1858. The deed from Richard O. Crisp, et al., to the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County is recorded among the Land Records of Baltimore City in Liber F.A.P. No. 887, folio 369. It is likewise recorded in the Land Records of Anne Arundel County in Liber S.H. No. 16, folio 27. ^{as} A certified copy of said deed ~~was~~ recorded among the Land Records of Baltimore City is attached hereto, marked "Parties' Exhibit No. 4".

9th: That Section 27 of Chapter 98 of the Acts of 1888 (being the Annexation Act of 1888) provides in part that the said Light Street Bridge should thereafter "be maintained and kept in repair for public travel at the sole expense of said City of Baltimore * * ", and that the said City so maintained said bridge until sometime during the year 1917, when the said bridge was replaced by the present Hanover Street Bridge, as hereinafter set forth.

10th: That the said Light Street Bridge was a public highway between Baltimore City and Anne Arundel County used by all kinds of vehicular traffic as well as street cars and pedestrians.

11th: That Chapter 267 of the Acts of 1914 authorized the State Roads Commission to construct a bridge from Baltimore City to Brooklyn either directly or by way of the point of Baltimore County and provided that upon completion of the said bridge and the opening of the same to travel as a public highway the Mayor and City Council of Baltimore was authorized to remove or otherwise dispose of the present Light Street Bridge. That the

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bridge authorized by said Chapter 267 is known as the ~~Light~~ Street Bridge and was completed as set forth above during the year 1917.

12th: That by virtue of Chapter 82 of the Acts of 1918 there was annexed to Baltimore City certain portions of Baltimore County and Anne Arundel County, including Brooklyn in the latter. That under Section 9 of said Act the title of the County Commissioners of Anne Arundel County and Baltimore County, etc., in any school-houses and lots, etc., etc., and other public property became vested in the Mayor and City Council of Baltimore; and by Section 11 of said Act it was provided that all roads, streets, avenues and alleys lying within the annexed territory should be thereafter validly constituted public highways of Baltimore City, and that any bridges existing in any of said highways would to be considered as parts thereof. That all of the area referred to in this stipulation, including that formerly occupied by the Light Street Bridge, that now occupied by the Hanover Street Bridge and the lot conveyed by Crisp and Cromwell to the County Commissioners of Anne Arundel County and the Mayor and City Council of Baltimore on May 3rd, 1880, hereinabove referred to, are within the corporate limits of Baltimore City as enlarged by the said Chapter 82 of the Acts of 1918.

13th: That as will appear from the plat filed herewith as "Parties' Exhibit No. 8", it appears that the southern end of the Light Street Bridge in the first instance and later the southern end of the Hanover Street Bridge rest upon the said lot of ground originally purchased by the Mayor and City Council of Baltimore and Anne Arundel County from Richard O. Crisp, et al., on May 3, 1880.

14th: That on July 8th, 1924, the Mayor and City Council of Baltimore conveyed to the Standard Oil Company of New Jersey a part of the lot conveyed by Crisp and Cromwell to the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County on May 3, 1880, reserving

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to itself (as will more fully appear from "Parties' Exhibit No. ____")
"all riparian rights in and to the Patapsco River to which this property
is in any way entitled". The said deed from the Mayor and City Council
of Baltimore to the Standrad Oil Company is recorded among the Land Records
of Baltimore City in Liber S.C.L. No. 4250, folio 60. A certified copy
of said deed is attached hereto marked "Parties' Exhibit No. ____".

15th: That on April 15th, 1926, the South Baltimore Harbor and
Improvement Company of Anne Arundel County conveyed to the Mayor and City
Council of Baltimore for the consideration of \$50,000. certain property
and riparian rights designated on "Parties' Exhibit No. ____" as Lots
_____, as will more fully appear from said deed recorded in
Liber S.C.L. No. 4570, folio 49 among the Land Records of Baltimore City.
A certified copy of said deed is attached hereto marked "Parties' Exhibit
No. ____". (Our record of Abstracts of Titles - Vol. 437, folio 205).

16th: That this suit was instituted on March 28th, 1916, shortly
after the agents of the City discovered that the patent to "Reed Bird
Island" had been issued to the defendant, John P. Bruns.

17th: That on September 23, 1910, the said John P. Bruns, together
with one John McLeod and Minnie McLeod, his wife, executed a deed to the
said "Reed Bird Island" to the defendant, Harry M. Wagner, which deed is
recorded among the Land Records of Anne Arundel County in Liber G.W.
No. 83, folio 184. A certified copy of said deed is attached hereto marked
"Parties' Exhibit No. ____".

18th: On May 5th, 1916, after the institution of this suit, Harry
M. Wagner and Harriet Cleveland Wagner, his wife, in consideration of the
sum of \$1.00, conveyed to the State of Maryland "a right-of-way for the
purpose of a street or highway over and across that part or the tract of land
situate in Anne Arundel County, in the State of Maryland, and constituting

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an island in the Patapsco River known as 'Reed Bird Island' * * *". It is further provided in said deed that the said Harry M. Wagner reserves "to himself the fee and reversion in said land, subject to the easement hereby granted and the right of access to the state road on each side thereof from his land by roadways which he may hereafter construct connecting with said right of way when and as such roadways are brought up to the grade of said highway, and the privilege of unloading material from said road upon his said land for grading the same".

19th: That on or about the _____ day of _____, 1926, after the purchase of the land and riparian rights of the South Baltimore Harbor and Improvement Company, etc., by the Mayor and City Council of Baltimore, the Law Department advised the Appeal Tax Court to abate any assessment against Harry M. Wagner or others upon "Reed Bird Island" but apparently this communication failed to reach the Appeal Tax Court, and from records thereof it appears that the said Harry M. Wagner paid State and City taxes to the Mayor and City Council of Baltimore and the State of Maryland for the years 1919 to 1928, inclusive, totaling \$1,276.98. That during the year 1928 it came to the attention of the City that there were several signs on "Reed Bird Island" which, it developed, were there through the permission of the said Harry M. Wagner, who was collecting rent from the owners of said signs. That the Mayor and City Council of Baltimore demanded of the owners of said signs that they cancel any agreements therefor with the said Harry M. Wagner, which was done on or about April 25th, 1928, since which time the Mayor and City Council of Baltimore has been collecting rent from the owners of said signs.

20th: That on May 23, 1928, the Appeal Tax Court was again notified to abate the assessment against Harry M. Wagner for "Reed Bird Island" and said Harry M. Wagner was notified of such abatement and was entitled to a refund thereunder ^{for} the tax year 1928, of which, however, he never availed himself.

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21st: That the rental collected by the said Harry M. Wagner prior to the year 1928 for signs erected on said island amounted to \$_____.

22nd: That the amount for which said Harry M. Wagner was assessed for the said "Reed Bird Island" from 1919 to 1928 was \$5950.00. That according to the tax records of Anne Arundel County the said Harry M. Wagner was first assessed for "Reed Bird Island" for the year 1912, the said assessment totaling \$5,056.00, which was increased in the year 1918 to \$5950.00, + the amount of State and County taxes paid on account of said assessment amounting to approximately \$_____.

23rd: That during the year 1920 the Mayor and City Council of Baltimore had been requested by the United States Army Engineers to provide a dumping ground for certain material which would result from the dredging of a channel across Ferry Bar by the Federal Government. That on June 28, 1920, the said Harry M. Wagner, as the owner of "Reed Bird Island", and the owners of Mud and Bridge View Islands, gave the City an option to purchase these three islands for \$205,000.00. Copy of the option from Harry M. Wagner to purchase "Reed Bird Island", dated June 28, 1920, is attached hereto marked "Parties' Exhibit No. ____". That said options, however, were never exercised because the City Solicitor refused to approve the title of the said Harry M. Wagner and wife to said "Reed Bird Island".

24th: That the Patapsco River at the places mentioned herein is navigable and that the tide ebbs and flows at these locations. That this suit is the one referred to in the brief filed on behalf of Harry M. Wagner by Messrs. Marbury, Gosnell & Williams and F. J. Kintner in the case of Melvin vs. Schlessinger, reported in 138 Md. 337.

25th: That no advantage is to be taken by either party of the delay in prosecuting or defending this suit.

26th. — *Realty devised to Wagner, etc.*

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First: That the rental collected by the said Harry M. Wagner prior to the year 1928 for signs erected on said island amounted to

Second: That the amount for which said Harry M. Wagner was assessed for the said "Reed Bird Island" from 1919 to 1928 was \$8950.00. That according to the tax records of Anne Arundel County the said Harry M. Wagner was first assessed for "Reed Bird Island" for the year 1913, the said assessment totaling \$5,050.00, which was increased in the year 1918 to \$8950.00, - the amount of State and County taxes paid on account of said assessment amounting to approximately \$

Third: That during the year 1920 the Mayor and City Council of Baltimore had been requested by the United States Army Engineers to provide a dumping ground for certain material which would result from the dredging of a channel across Ferry Bar by the Federal Government. That on June 28, 1920, the said Harry M. Wagner, as the owner of "Reed Bird Island", and the owners of Mud and Bridge New Islands, gave the City an option to purchase these three islands for \$205,000.00. Copy of the option from Harry M. Wagner to purchase "Reed Bird Island", dated June 28, 1920, is attached hereto marked "Exhibits", Exhibit No. _____. That said option, however, were never exercised because the City Solicitor refused to approve the title of the said Harry M. Wagner and wife to said "Reed Bird Island".

Fourth: That the Patuxent River at the places mentioned herein is navigable and that the tide ebb and flow at these locations. That this suit is the one referred to in the brief filed on behalf of Harry M. Wagner by Messrs. Harbo, Gonnell & Williams and _____ in the case of Melvin vs. Schlesinger, reported in 138 Md. 337.

Fifth: That no advantage is to be taken by either party of the delay in prosecuting or defending this suit.

5th, - Court Order of Wagner, etc.